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PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following Bills were introduced in Parliament on the 6th June, 1951:—

\*BILL No. 56 of 1951

*A Bill further to amend the Indian Income-tax Act, 1922.*

BE it enacted by Parliament as follows:—

**1. Short title and commencement.**—(1) This Act may be called the Indian Income-tax (Amendment) Act, 1951.

(2) It shall be deemed to have come into force on the 1st day of April, 1951.

**2. Amendment of section 2, Act XI of 1922.**—In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the principal Act),—

(a) for clause (2), the following clause shall be substituted, namely:—

“(2) ‘assessee’ means a person by whom income-tax, whether with or without interest, is payable, and includes a person by whom a penalty or a sum of money for compounding an offence under section 53 or any other sum is payable under this Act;”;

(b) clause (6) shall be renumbered as clause (5A), and after clause (5A) as so renumbered, the following clause shall be inserted, namely:—

“(6) ‘Director of Inspection’ means a person appointed to be a Director of Inspection under section 5, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection, or an Assistant Director of Inspection;”;

(c) in clause (6A),—

(i) in sub-clause (b), after the word “debenture-stock” the words “or of deposit certificates in any form, whether with or without interest” shall be inserted;

\*The President has, in pursuance of clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, recommended to Parliament the introduction of the Bill.

(ii) in the proviso to sub-clause (c), the word "and" occurring at the end shall be omitted;

(iii) after sub-clause (d), the following sub-clause shall be inserted, namely:—

"(e) any payment by a company (not being a company in which the public are substantially interested within the meaning of section 23A) of any sum (whether as representing a part of the assets of the company or otherwise) by way of advances or loans to any of its shareholders, or any payment by the company on behalf of or for the individual benefit of any of its shareholders, to the extent to which the company possesses accumulated profits, whether capitalised or not:

Provided that the Income-tax Officer is of opinion that the sum so paid is in effect out of the accumulated profits of the company: and

Provided further that where any such sum has been held to be a dividend by the Income-tax Officer and any dividend actually paid by the company in any subsequent year is set off against the whole or any part of such sum, the whole or part of such amount, as the case may be, to the extent to which it is so set off, shall not be included within the expression 'dividend' for any of the purposes of this Act;"

(d) for clause (6C), the following clause shall be substituted, namely:—

"(6C) 'income' includes—

(i) anything included in 'dividend' under clause (6A), or anything deemed to have been paid, credited or distributed as dividend within the meaning of this Act;

(ii) anything which, under *Explanation 2* to sub-section \* (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section;

(iii) any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10;

(iv) any sum in the nature of a puggree, salami, nazar or other like premium received by a person after the end of the previous year for the assessment for the year ending on the 31st day of March, 1951, on account of, or in connection with, the granting of any lease of immoveable property by him for a term of fifty years or less:

Provided that for the purposes of assessment of any such sum such portion thereof as is equal to the amount of the sum received divided by the number of years of the lease, subject to a minimum of one-twentieth of the amount of such sum, shall be taken to be the income of the previous year in which such sum is received and of the nineteen subsequent previous years or less, as the case may be, and where before the expiry of twenty years or the term fixed, whichever is the less, the lease is terminated or the lessor dies or the lessor, being a firm or an association of persons or a company, is dissolved or wound up, as the case may be, the proportionate amount for the unexpired period of the lease shall be deemed to be

the income of the year in which the lease is terminated or the lessor dies or is dissolved or wound up, as the case may be;

(v) any compensation received by a person by way of damages or otherwise on the termination of a managing agency, where the Income-tax Officer is of opinion that the party concerned in the transaction has a controlling interest, whether direct or indirect, in the managed enterprise or in the new managing agency, or in both;

(vi) any capital gain chargeable according to the provisions of section 12B;

(vii) the surplus, if any, in any business of insurance carried on by a mutual insurance association computed in accordance with rule 9 in the Schedule;";

(e) after clause (6D), the following clause shall be inserted, namely:—

"(6E) 'Inspector of Income-tax' means a person appointed to be an Inspector of Income-tax under section 5;"

(f) in clause (II),—

(i) in the proviso to sub-clause (a), after the words "profits and gains" the words, letter and brackets "or has exercised the option under clause (c)" shall be inserted;

(ii) in sub-clause (c), after the words "option of the assessee" the words "which shall be exercised within twelve months of the setting up of the business" shall be inserted;

(g) for sub-clause (a) of clause (12), the following sub-clause shall be substituted, namely:—

"(a) the secretary, treasurer, manager, managing agent and, where the managing agent is a firm or company, any of the partners or the principal officer thereof, as the case may be, or the agent of the authority, company, body or association or, in the case of a company being wound up, the liquidator thereof, or";

(h) clause (14) shall be renumbered as clause (13A), and after clause (13A) as so renumbered, the following clause shall be inserted, namely:—

"(14) 'shareholder' means a person holding a share in any company and registered as a member thereof in its books:

Provided that the Income-tax Officer may, in lieu of treating such person as the shareholder treat as such any other person who is either beneficially entitled for the time being to the share or who would be liable to be assessed on the dividend, if any, distributed or deemed to be distributed in respect of the share;"

**3. Amendment of section 4, Act XI of 1922.**—In section 4 of the principal Act,—

(a) in sub-section (I),—

(i) for the second proviso, the following proviso shall be substituted, namely:—

"Provided further, that in the case of a person who was not resident in the taxable territories in two out of the three

years immediately preceding the previous year, so much of the income, profits and gains referred to in sub-clause (iii) of clause (b) as accrued or arose to him without India, shall not be included in his total income:";

(ii) in *Explanation 2*, for the words "wherever paid if it is earned in the taxable territories" the following shall be substituted, namely:—

"wherever paid if—

(i) it is earned in the taxable territories; or

(ii) it is payable to a citizen of India by the Central Government or the Government of any State other than the State of Jammu and Kashmir; or

(iii) it is paid or payable out of any superannuation fund, contributions to which have been allowed at any time as a deduction out of the income, profits and gains accruing or arising in the taxable territories.";

(iii) after *Explanation 4*, the following *Explanation* shall be inserted, namely:—

"*Explanation 5*.—For the purposes of this Act,—

(i) income, profits and gains resulting from the manufacture and sale of goods, actually accrue or arise in full in the taxable territories if the goods are sold in the taxable territories;

(ii) income from interest (including interest on securities) actually accrues or arises in full in the taxable territories if the money borrowed is used in the taxable territories in cash or in kind;

(iii) income from royalties for the use of any copyright, patent, design, secret process or formula, trade mark or other like property actually accrues or arises in full in the taxable territories if such property is used, or exploited in the taxable territories;

(iv) profits arising to a distributor or producer by way of hire, royalty or premium on cinematograph films actually accrue or arise in full in the taxable territories, if such profits are in respect of the exhibition thereof or relate to any rights of exhibition or distribution in respect thereof.";

(b) in sub-section (3),—

(i) for clauses (i) and (ia), the following clause shall be substituted, namely:—

"(i) Subject to the provisions of clause (c) of sub-section (1) of section 18, any income derived from property held under a trust or other legal obligation solely for religious or charitable purposes, where such purposes relate to anything done within the taxable territories, and, in the case of a property so held in part only for such purposes, the income applied or finally set apart for application thereto:

Provided that where such income is derived from business carried on on behalf of a religious or charitable institution,

such income shall be included in the total income unless the income is applied solely to the purposes of the institution, and

(a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(b) the work in connection with the business is mainly carried on by the beneficiaries of the institution.”;

(ii) for clause (vi), the following clause shall be substituted, namely:—

“(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses necessary for the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred.”;

(iii) in clause (xiii), in the definition of “charitable purpose”, the word, letters and brackets “clause (ia)” shall be omitted, and for the words “income of a private religious trust” the words “income from property held under a trust or other legal obligation for private religious purposes” shall be substituted;

(iv) after clause (xiii), the following clauses shall be inserted, namely:—

“(xiv) Any income received by an employee of a foreign enterprise not engaged in any trade or business in the taxable territories as remuneration for services rendered by him during the course of his stay in the taxable territories, where such stay does not exceed in the aggregate a period of ninety days in any year:

Provided that no such remuneration shall be allowed as a deduction in computing any income, profits and gains chargeable under this Act.

(xv) Any income received as remuneration from the Government of a foreign State by an employee of that State, who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of the foreign State, and any other income of such employee or of the members of his family accompanying him to India, which accrues or arises without the taxable territories, and is not deemed to accrue or arise in the taxable territories, upon which such employee or the members of his family are required to pay any income or social security tax to the Government of the foreign State;

(xvi) Any income from interest on, or from premium on the redemption of, any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development, except where the holder of such bond is a person resident in the taxable territories;

(xvii) Interest on the 3½ per cent. Ten-year Treasury Savings Deposit Certificates issued by or under the authority

of the Central Government for an amount not exceeding the maximum amount which an assessee is entitled to deposit in such certificates."

**4. Amendment of section 4A, Act XI of 1922.**—In section 4A of the principal Act,—

(a) for clause (b), the following clause shall be substituted, namely:—

"(b) a Hindu undivided family, firm or other association of persons is resident in the taxable territories in any year if during that year the control and management of its affairs is not situated wholly without the taxable territories;"

(b) at the end of the section, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—An individual, a Hindu undivided family, firm or other association of persons shall be chargeable as resident in the taxable territories in respect of all his or its sources of income, notwithstanding that he or it was resident in the taxable territories in the previous year in respect of any one only of his or its sources of income, profits and gains."

**5. Omission of section 4B, Act XI of 1922.**—Section 4B of the principal Act shall be omitted.

**6. Amendment of section 5, Act XI of 1922.**—In section 5 of the principal Act,—

(a) in sub-section (1).—

(i) after clause (c), the following clause shall be inserted, namely:—

"(aa) Directors of Inspection,"

(ii) after clause (d), the following clause shall be inserted, namely:—

"(e) Inspectors of Income-tax."

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Central Government may appoint one or more Directors of Inspection as it thinks fit and Directors of Inspection shall, subject to the control of the Central Board of Revenue, perform such functions of any income-tax authority as may be assigned to them by the Central Government."

(c) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) The Central Government may appoint as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers of Class I service as it thinks fit, and the Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Officers of Class II

service and Inspectors of Income-tax as may, from time to time, be sanctioned by the Central Government.”;

“(34) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.”;

(d) in the second sentence of sub-section (5), the words “with the previous approval of the Central Board of Revenue,” shall be omitted, and for the words “Appellate Assistant Commissioner”, wherever they occur in this sentence, the words “Inspecting Assistant Commissioner” shall be substituted;

(e) after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other income-tax authority under whom they are appointed to work, and shall be subordinate to such officer or other authority.”;

(f) in sub-section (7), for the words “assigned to them by” the words “in respect of cases assigned to” shall be substituted;

(g) after sub-section (7A), the following sub-sections shall be inserted, namely:—

“(7B) The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner, as the case may be, may issue such instructions as he thinks fit for the guidance of any Income-tax Officer subordinate to him in the matter of any assessment, and for the purposes of making any inquiry under this Act (which he is hereby empowered to do), the Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall have all the powers that an Income-tax Officer has under this Act in relation to the making of inquiries.

(7C) Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.”

**7. Amendment of section 5A, Act XI of 1922.**—In section 5A of the principal Act,—

(a) in sub-section (2), the proviso shall be omitted;

(b) in sub-section (3), for the words beginning with “A judicial member shall be” and ending with “the Auditors Certificates Rules, 1932:”, the following shall be substituted, namely:—

“A judicial member shall be a person who has for at least ten years either held a civil judicial post or been in practice as an advocate of a High Court, and an accountant member shall be

a person who has for at least ten years been in the practice of accountancy, whether as a chartered accountant under the Chartered Accountants Act, 1949 (XXXVIII of 1949) or as a registered accountant under any law formerly in force:";

(c) in sub-section (4), the word "judicial" shall be omitted.

**8. Amendment of section 7, Act XI of 1922.**—In section 7 of the Principal Act,—

(i) in sub-section (1), for *Explanation 1*, the following *Explanation* shall be substituted, namely:—

*'Explanation 1.*—For the purposes of this sub-section, "perquisites" includes—

(a) the full value of any benefits granted to the assessee by his employer, such as the provision of living or other accommodation, whether free of rent or at concessional rent, the supply of food or domestic servants free of cost or at concessional rate or the provision for any other service or supply or any other amenity of whatsoever nature;

(b) any sum paid by the employer in respect of any charge or other obligation which but for such payment would have been paid by the assessee;

(c) any sum paid by the employer, whether paid directly or through a fund to which the provisions of Chapters IXA and IXB do not apply, to effect an assurance on the life of the assessee or in respect of a contract for an annuity on the life of the assessee;

Provided that where the perquisites are for the benefit of a number of employees collectively, the value of the benefit to the assessee shall be deemed to be such portion of the total cost to the employer in respect thereof as is proportionate to the benefit enjoyed by the assessee.;

(ii) in the proviso to *Explanation 2*, after the words "liable to income-tax any payment" the words "of death-cum-retirement gratuity received under the revised Pension Rules of the Central Government, or any payment" shall be inserted, and the words "or in lieu of or in commutation of an annuity" and the words "or on his leaving the employment in connection with which the fund is established" shall be omitted;

(iii) sub-section (2) shall be omitted.

**9. Amendment of section 8, Act XI of 1922.**—In section 8 of the Principal Act,—

(i) for the word "receivable", wherever it occurs, the words "received or receivable" shall be substituted; and for the words "a local authority or a company" the words and figures "a local authority, a company or a co-operative society registered for the time being under the Co-operative Societies Act, 1912 (II of 1912), or under any



law of a State governing the registration of co-operative societies:" shall be substituted;

(ii) in the first proviso, for the words and figures "not being interest on a loan issued for public subscription before the 1st day of April, 1938," the words and figures "not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf," shall be substituted.

**10. Amendment of section 9, Act XI of 1922.**—In section 9 of the principal Act,—

(i) in sub-section (1), the words "*bona fide*" shall be omitted and in the proviso to clause (iv), for the words and figures "not being interest on a loan issued for public subscription before the 1st day of April, 1938," the words and figures "not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf," shall be substituted, and after the proviso, as so amended, the following further proviso shall be inserted, namely:—

"Provided further that no allowance shall be made in respect of any annual charge which is created in consideration of the right of any present or past member of a Hindu undivided family to any maintenance allowance where no tax is payable by such member in respect of the maintenance allowance by virtue of the provisions of sub-section (1) of section 14.";

(ii) in sub-section (2), for the words beginning with the words "For the purposes of this section," and ending with the words "ten per cent. of such total income", the following shall be substituted, namely:—

"For the purposes of this section, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year, and, where the property is let in consideration of a premium in addition to a monthly or annual rent and such premium is liable to be included in the income of the lessor by virtue of clause (60)(iv) of section 2, the annual value shall be so computed as to include also such premium:

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, the annual value shall be determined in the same manner as if the property had been let to a tenant, so however that, where the sum so determined exceeds ten per cent. of the total income of the owner, the annual value of the property shall be deemed to be ten per cent. of such total income:".

**11. Amendment of section 10, Act XI of 1922.**—In section 10 of the principal Act,—

(1) in sub-section (2),—

(i) to clause (i), the following further proviso shall be added, namely:—

"Provided further that where in addition to such rent any premium is paid for the lease of the premises, and such

premium is liable to be included in the income of the lessor by virtue of clause (6C)(iv) of section 2, or sub-section (3) of section 9, as the case may be, the rent paid shall be computed so as to include also such portion of the premium as is equal to the premium paid divided by the number of years of the lease subject to a minimum of one-twentieth of the premium for the period of the lease or for a period of 20 years, as the case may be.”;

(ii) in clause (iii),—

(a) in the proviso, for the words and figures “not being interest on a loan issued for public subscription before the 1st day of April, 1938,” the words and figures “not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf,” shall be substituted;

(b) after the proviso as so amended, the following further proviso shall be inserted, namely:—

“Provided further that, where after the commencement of the business, profession or vocation, the assessee has made investments or acquired assets which are not for the purposes of the business, profession or vocation or the income from which is not wholly chargeable under this Act, so much of the borrowed capital as is equal to the amount utilised in such investments or assets shall not be deemed to be capital borrowed for the purposes of the business, profession or vocation.”;

(iii) in clause (c) of the proviso to clause (vi), for the words “where full” the words “where, in the assessment of the assessee or if the assessee is a registered firm, in the assessments of its partners, full” shall be substituted;

(iv) in clause (vii), for the words “machinery or plant”, wherever they occur, the words “machinery, plant or furniture” shall be substituted, and to the clause as so amended, the following *Explanation* shall be added at the end, namely:—

“*Explanation.*—In this clause, the expression “sold” means transferred for a price or by way of exchange, or compulsorily acquired under any law for the time being in force, whether the transfer or acquisition was made before or after the commencement of the Indian Income-tax (Amendment) Act, 1951.”;

(v) at the end of the proviso to clause (x), the following words shall be inserted, namely:—

“any part of the amount which, in the opinion of the Income-tax officer, is excessive or unjustified being disallowed;”;

(vi) in clause (xv), for the words and brackets “(not being in the nature of capital expenditure or personal expenses of the assessee)” the words and brackets “(not being an allowance of the nature described in any of the clauses (i) to (xvi) inclusive, and

not being in the nature of capital expenditure or personal expenses of the assessee)" shall be substituted;

(2) in sub-section (4),—

(i) for the word, letters and brackets "clause (xi)" the word, letters and brackets "clause (xv)" shall be substituted;

(ii) in clause (b), for the words "any partner of the firm; or" the following shall be substituted, namely:—

"any partner of the firm or by an association of persons to any member of the association, or by a Hindu undivided family to any member of the family:

Provided that interest paid to any member of the Hindu undivided family on his self-acquired and separate funds lent to the family shall not be disallowed under this clause; or";

(3) in sub-section (5),—

(i) after clause (b), the following clause shall be inserted, namely:—

'(c) in the case of assets acquired by the assessee by way of gift or inheritance, the "written-down-value" as in the case of the previous owner or the market value thereof whichever is the less.';

(ii) at the end, the following *Explanation* shall be inserted, namely:—

*Explanation.*—For the purposes of this sub-section, the expression "actual cost" means the actual cost of the assets as reduced by the amounts, if any, received from any outside source for or in connection with the purchase of such assets, and any allowance in respect of any depreciation carried forward under clause (b) of the proviso to clause (vi) of sub-section (2) shall be deemed to be depreciation "actually allowed"";

(4) in sub-section (6), after the word "association" the following shall be inserted, namely:—

"which is registered under the Indian Companies Act, 1913, (VII of 1913), or is a body corporate under any other law for the time being in force in the taxable territories, shall be deemed to carry on business within the meaning of this section and shall be chargeable to tax accordingly, and any other trade, profession or similar association";

(5) after sub-section (6), the following sub-section shall be inserted, namely:—

"(6A)(a) Where the assessee has assets, transactions or undertakings which are either not connected with the business, profession or vocation under assessment or the income whereof is not wholly chargeable under this Act, the allowances admissible under this section shall be reduced in whole or in part to such extent as the Income-tax Officer considers reasonable.

(b) In computing the income, profits and gains chargeable under this section, no allowance shall be made under any provision of this Act in respect of any expenditure or part thereof, if in relation to such expenditure or part, as the case may be, an allowance has been made under some other provision of this Act."

**12. Amendment of section 12, Act XI of 1922.**—In section 12 of the principal Act,—

(i) in clause (b) of the proviso to sub-section (2), for the words and figures "not being interest on a loan issued for public subscription before the 1st day of April, 1938," the words and figures "not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf" shall be substituted;

(ii) after the proviso as so amended, the following further proviso shall be inserted, namely:—

"Provided further that if any premium is paid in addition to the monthly or annual rent in respect of a lease and such premium is liable to be included in the income of the lessor by virtue of clause (6C)(iv) of section 2 or sub-section (2) of section 9, as the case may be, an allowance shall be made in the like manner and to the same extent as would be made under clause (i) of sub-section (2) of section 10.";

(iii) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) Where the assessee has assets, transactions or undertakings, which are either not connected with his income under the head 'other sources' or the income whereof is not wholly chargeable under this Act, the allowances admissible under this section shall be reduced in whole or in part to such extent as the Income-tax Officer considers reasonable."

**13. Insertion of new section 12AA in Act XI of 1922.**—After section 12A of the principal Act, the following section shall be inserted, namely:—

"12AA. *Royalties or copyright fees for literary or artistic works.*—Where the time taken by the author of a literary or artistic work in the making thereof is—

(a) more than twelve but less than twenty-four months,  
or

(b) more than twenty-four months,

the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work, or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment as hereunder—

(i) in the case referred to in clause (a), one-half of the amount of such lump sum, royalties or fees, as the income of the previous

year in which the whole amount is received or receivable, and the other half, as the income of the next succeeding previous year; and

(ii) in the case referred to in clause (b), one-third of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and one-third of the said amount as the income of each of the two next succeeding previous years.

*Explanation.*—For the purposes of this section, the expression 'author' includes a joint author and the expression 'lump sum' in regard to royalties or copyright fees includes an advance payment on account of such royalties or copyright fees which is not returnable."

**14. Amendment of section 13, Act XI of 1922.**—For the provisos to section 13 of the principal Act, the following proviso shall be substituted, namely:—

"Provided that—

(a) if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deducted therefrom, the Income-tax Officer may, after recording the reasons for his opinion, compute the income, profits and gains on such basis and in such manner as he may determine;

(b) where, in computing the income of the third year immediately preceding the previous year, an allowance has been made for any amount due but not actually paid by the assessee in that year and such amount remains unpaid at the end of the previous year, such amount shall be deemed to be income, profits and gains and to accrue or arise in the taxable territories during the previous year;

(c) where any amount which has been deemed to be income, profits and gains under clause (b) is actually paid by the assessee subsequently, an allowance of the amount so paid shall be made from the income of the year in which it is paid;

(d) where, at any time prior to the previous year, an allowance has been made in respect of any trading debt or loss incurred by the assessee, any amount received by him during the previous year in respect of such debt or loss by way of compensation or otherwise, shall be deemed to be the income, profits and gains and to accrue or arise in the taxable territories during the previous year."

**15. Amendment of section 14, Act XI of 1922.**—In section 14 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The tax shall not be payable by an assessee in respect of any sum which he receives—

(i) as a member of a Hindu undivided family out of the total income of the family in respect of which the family itself has been or can be assessed as a unit; or

(ii) as a member of a Hindu undivided family from the holder of an impartible estate belonging to the family, out of the total income of the holder of the estate where such income has been or can be assessed as a unit."

(b) in clause (c) of sub-section (2), for the words and letter "Part B State" the words "the State of Jammu and Kashmir" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1950.

**16. Amendment of section 15, Act XI of 1922.**—In section 15 of the principal Act,—

(a) in sub-section (1), after the words "on the life of a wife or husband of the assessee", where they occur for the second time, the words "which in conjunction with any other benefit secures a capital sum on death" shall be inserted; and to the said sub-section, the following *Explanation* shall be added, namely:—

"*Explanation.*—For the purposes of this sub-section, any sum paid by the employer of the assessee to effect an insurance on the life of the assessee or in respect of a contract for an annuity on the life of the assessee, which is included in his total income as a perquisite under *Explanation 1* to sub-section (1) of section 7, shall be deemed to be a sum paid by the assessee.";

(b) in sub-section (2A), the words "other than a contract for a deferred annuity" shall be omitted.

**17. Amendment of section 15C, Act XI of 1922.**—In section 15C of the principal Act,—

(a) in sub-section (2),—

(i) in clause (i), for the word "three" the word "six" shall be substituted;

(ii) in clause (iii), for the word "fifty" the word "twenty-five" shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) The provisions of this section shall apply to the assessment for the financial year next following the previous year in which the assessee begins to manufacture or produce articles and for the four assessments immediately succeeding."

**18. Amendment of section 16, Act XI of 1922.**—In section 16 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a), for the words, figures and letters "section 15B and section 15C" the words, figures, letters and brackets "section 15B, section 15C and sub-section (3) or sub-section (4) of section 25" shall be inserted;

(ii) in clause (b) after the proviso, the following further proviso shall be inserted, namely:—

“Provided further that where any such partner pays interest in respect of the capital borrowed by him and invested in the business, profession or vocation of the firm or where according to the terms of the partnership he is required to work in the firm but engages a person to work therein on his behalf, the interest or salary paid by him shall be allowed as a deduction from his share of the firm so computed;”;

(iii) in clause (c), after the words “income of the transferor” the following shall be inserted, namely:—

“and all transactions in respect of the property or assets which have been the subject of such settlement, disposition or transfer, and all such property or assets shall, for the purposes of this clause, be deemed to be the transactions, property or assets of the settlor, disponent or transferor, as the case may be;”;

(b) in sub-section (2), after the words “an assessee” the words “who is a shareholder in a company” shall be inserted;

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a spouse or minor child of such individual or of the minor child of a brother of such individual as arises directly or indirectly—

(i) from the membership of the spouse in a firm of which such individual is a partner;

(ii) from the admission of any such minor to the benefits of partnership in a firm of which such individual or the spouse of such individual is a partner;

(iii) from any settlement or disposition made by such individual in favour of the spouse or from assets transferred directly or indirectly by such individual to the spouse otherwise than for adequate consideration or in connection with an agreement to live apart;

(iv) from any settlement or disposition made by such individual in favour of such minor or from assets transferred directly or indirectly by such individual to any such minor, not being a married girl, otherwise than for adequate consideration; and

(b) so much of the income of any person or association of persons as arises from any settlement or disposition made by such individual in favour of the person or association or from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of the spouse or minor child of such individual or for the benefit of a minor child of such individual's brother or for the benefit of all or any two or more of them.

*Explanation.*—For the purposes of this sub-section, the word 'child' includes adopted child, foster-child, step-child, illegitimate child and grandchild."

**19. Amendment of section 18, Act XI of 1922.**—In section 18 of the principal Act,—

(a) in sub-section (2B), for the words "at the rate or rates applicable to the estimated income of the assessee under this head", the following shall be substituted, namely:—

"on the estimated income of the assessee under this head in accordance with the provisions of clause (b) of sub-section (1) of section 17:

Provided that where—

(i) the person not so resident has obtained a certificate in writing from the Income-tax Officer (which certificate the Income-tax Officer shall be bound to give in every proper case on the application of the assessee) stating that income-tax and super-tax may be deducted at the rates specified therein, or

(ii) the Income-tax Officer has, by an order in writing, required the person responsible for making payment to deduct income-tax and super-tax at the rates specified in that order, the person responsible for making payment shall, until such certificate or order is cancelled by the Income-tax Officer, deduct income-tax and super-tax at the rates specified in such certificate or order, as the case may be."

(b) sub-section (3A) shall be renumbered as sub-section (3B), and before that section as so renumbered, the following sub-section shall be inserted, namely:—

'(3A) The person responsible for paying any income chargeable under the head "Interest on securities" to a person whom he has no reason to believe to be resident in the taxable territories, shall, at the time of payment, deduct super-tax on the amount of such interest—

(i) if such person is a company, at the rate applicable to a company,

(ii) if such person is not a company, in accordance with the provisions of clause (b) of sub-section (1) of section 17:

Provided that where such person is not a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B).";

(c) in sub-section (3B) as so renumbered, for the words commencing with "income-tax thereon as an agent, deduct income-tax at the maximum rate" and ending with the words "or deduct the tax at such less rate, as the case may be:" the following shall be substituted, namely:—

"income-tax and super-tax thereon as an agent, deduct income-tax at the maximum rate and super-tax at the rate applicable to



a company or in accordance with the provisions of sub-clause (b) of sub-section (1) of section 17; as the case may be:

Provided that where the person not so resident is not a company, the proviso to sub-section (2B) shall apply to the deduction of income-tax and super-tax under this sub-section as it applies to the deduction of income-tax and super-tax under sub-section (2B):”;

(d) the existing sub-sections (3B) and (3C) shall be omitted;

(e) for sub-sections (3D) and (3E), the following sub-sections shall be substituted, namely:—

“(3D) Where the person responsible for paying any sum chargeable under this Act other than interest, to a person not resident in the taxable territories, considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable and upon such determination tax shall be deducted therefrom by the person responsible for making such payment in accordance with the provisions of sub-section (3B).

(3E) The principal officer of an Indian company or a company which has made such effective arrangements as may be prescribed for the deduction of super-tax from dividends shall, at the time of paying any dividend to a shareholder whom the principal officer has no reason to believe to be resident in the taxable territories, deduct super-tax on the amount of such dividend as increased in accordance with the provisions of sub-section (2) of section 16—

(i) if the shareholder is a company, at the rate applicable to a company,

(ii) if the shareholder is a person other than a company, in accordance with the provisions of clause (b) of sub-section (1) of section 17:

Provided that in the case of a shareholder other than a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B).”;

(f) in sub-section (5), after the words “Any deduction made” the words “and paid to the account of the Central Government” shall be inserted; after the words “given to him therefor” the words “on the production of the certificate furnished under sub-section (9) of section 20, as the case may be,” shall be inserted, and after the second proviso, the following further proviso shall be inserted, namely:—

“Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted or in respect of any sum by which the dividend has been increased under sub-section (2) of section 16, may be given to each such person in the same proportion in which the interest on such security or dividend on such share has been included in his total income.”;

(g) in sub-section (7), for the words, brackets, figures and letters "sub-sections (3D) and (3E)" the word, brackets, figure and letter "sub-section (3E)" shall be substituted;

(h) in sub-section (9), the brackets, figures and letters "(30), (3D)" shall be omitted;

(i) after sub-section (9), the following sub-section shall be inserted, namely:—

"(10) In this section, the expression 'person responsible for paying' shall mean and shall be deemed always to have meant—

(i) in the case of payments of income chargeable under the head 'Salaries' other than payments by the Central Government or the Government of a State, the employer himself or if the employer is a company, the company itself or the principal officer thereof;

(ii) in the case of payments of income chargeable under the head 'Interest on securities', other than payments made by or on behalf of the Central Government or the Government of a State, the local authority, company or the co-operative society concerned or the principal officer thereof."

**20. Amendment of section 18A, Act XI of 1922.**—In section 18A of the principal Act,—

(a) in sub-section (1) (a), for the words "if that total income exceeded six thousand rupees." the words "if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees." shall be substituted;

(b) in sub-section (3), for the words "is likely to exceed six thousand rupees," the words "is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees," shall be substituted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) If at any time during a financial year, the Income-tax Officer has reason to believe that—

(a) the tax payable by any person under this section in that year on his income in respect of the period which would be the previous year or part thereof for the purposes of assessment for the year next following is likely to be greater than—

(i) the tax that he has been, or would have been, required to pay under sub-section (1) on the basis of his last completed assessment, or

(ii) the estimate of the tax payable by him under sub-section (3), or

(b) any person who should have sent an estimate of the tax payable by him under sub-section (3), has not sent any such estimate,

the Income-tax Officer may require such person to furnish a statement of his income for the period which would be the whole

of the previous year or part thereof for the purposes of the assessment for the year next following, and may also require him to produce such account books or other information as he may require in respect of that period to enable him to determine the tax payable by such person under this section:

Provided that if any person does not furnish a statement of his income or does not produce the account books or other information required under this sub-section, the Income-tax Officer shall determine the tax payable by such person to the best of his judgment and may further direct that such person shall pay, by way of penalty, a sum not exceeding one-fifth of the tax so determined."

**21. Insertion of new section 20B in Act XI of 1922.**—After section 20A of the principal Act, the following section shall be inserted, namely:—

*"20B. Supply of information regarding interest on securities and dividends collected on behalf of other persons.*—(1) Any person who claims that he is himself not liable to be assessed in respect of any interest on securities or dividends received or collected by him during any financial year shall, on or before the 15th day of June next after the close of the financial year to which the receipt or collection relates, furnish to the prescribed Income-tax Officer a return in the prescribed form and verified in the prescribed manner showing the names and addresses of all persons on whose behalf interest on securities or dividend was so collected or received, and forward therewith the relevant certificate under sub-section (9) of section 18 or section 20, as the case may be.

(2) No person referred to under sub-section (1) shall be entitled to claim that he is not himself liable to be assessed on the interest on securities or dividends unless he has furnished the returns and certificates required in respect thereof."

**22. Amendment of section 21, Act XI of 1922.**—After clause (b) of section 21 of the principal Act, the following clause shall be inserted, namely:—

*"(bb) the value of any benefit or perquisite granted to any person and the amount of any special allowance specifically granted to meet expenses necessary in the performance of the duties of office or employment of profit;"*

**23. Amendment of section 22, Act XI of 1922.**—In section 22 of the principal Act,—

(a) in sub-section (1), for the words "exceeded the maximum amount which is not chargeable to income-tax" the words "did not fall short of the maximum amount not chargeable to income-tax by more than five hundred rupees" shall be substituted;

(b) in sub-section (2), for the words "whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax," the words "whose total income in the Income-tax Officer's opinion, does not fall short of the maximum amount not chargeable to income-tax by more than five hundred rupees," shall be substituted;

(c) after sub-section (2), the following sub-sections shall be inserted, namely:—

- “(2A) If any person, who has not been served with a notice under sub-section (2), has sustained a loss of profits or gains in any year under the head ‘Profits and gains of business, profession or vocation’, and such loss or any part thereof would ordinarily have been carried forward under sub-section (2) of section 24, he shall, if he is to be entitled to the benefit of the carry forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (1), all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under sub-section (1) had his income exceeded the maximum amount not liable to income-tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(2B) The prescribed form of returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, whose total income exceeds the maximum amount not liable to super-tax, be accompanied by statements of accounts including a Balance Sheet, Profit and Loss Account and Trading Accounts duly audited by a chartered accountant.”;

(d) in sub-section (4), for the words “such accounts or documents as the Income-tax officer may require”, the following words shall be substituted, namely:—

“such accounts or documents, including accounts relating to any year subsequent to the previous year, as the Income-tax Officer may require, or to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters as the Income-tax Officer may require.”

**24. Amendment of section 23, Act XI of 1922.**—In section 23 of the principal Act,—

(a) in sub-section (2), for the words “without requiring” the words “without further information or without requiring” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where any fact, account or document, is relied upon by the assessee in support of his return, the onus of proving the correctness of such fact, account or document and of proving the quantum of his total income or total world income, shall be on the assessee.”

**25. Amendment of section 23A, Act XI of 1922.**—In section 23A of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends,

If any, by any company up to the end of the twelfth month after the end of that previous year, are less than sixty per cent. of the assessable income of the company of that previous year, as reduced by—

(a) the amount of income-tax and super-tax payable by the company in respect thereof,

(b) the amount of any tax levied by the Government of a State or by a local authority, whether such tax is wholly or partly an admissible deduction under section 9 or section 10 or not, and

(c) in the case of a banking company, the amount transferred to a reserve fund under section 17 of the Banking Companies Act, 1949,

he may, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of any dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the whole of the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes and reduced by the amounts aforesaid shall be deemed to have been distributed as dividends amongst the shareholders as at the date of any general meeting which has been held within the twelve months aforesaid, or as at the end of the aforesaid period of twelve months whichever is earlier, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income:

Provided that in the case of a company whose income is derived mainly from investments or from dealings in investments, and in the case of any other company, if its reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company, whichever of these is greater, this section shall apply, as if instead of the words 'sixty per cent.' and 'fifty-five per cent.' the words 'one hundred per cent.' and 'ninety per cent.' respectively had been substituted:

Provided further that where the company has distributed not less than fifty-five per cent. of its assessable income, as reduced by the amounts aforesaid, the Inspecting Assistant Commissioner of Income-tax shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section, unless after service of a notice from the Inspecting Assistant Commissioner, the company fails to make within two months of the service of such notice a further distribution of its profits and gains so as to bring up the total distribution to not less than sixty per cent. of the assessable income of the company of the previous year concerned, as reduced by the amounts as aforesaid:

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company has been held by the parent company or by the nominees thereof at the end of that previous year.

*Explanation.*—For the purposes of this sub-section, a company shall be deemed to be a company in which the public are substantially interested only if at any time during that previous year its shares have been offered for sale in a recognised stock exchange in the taxable territories and it is neither a private company within the meaning of the Indian Companies Act, 1913 (VII of 1913), nor a company in which shares carrying more than fifty per cent. of the total voting power have, at any time during that previous year, been held or controlled by less than six persons”;

(b) in sub-sections (3) and (4), for the word “member”, wherever it occurs, the word “shareholder” shall be substituted;

(c) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(6) Any notice required under the provisions of this section may, where the company is in liquidation, be served on the liquidator, and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company and for the due payment of any tax payable by or recoverable from the company under the provisions of this section.

(7) In the case of a company which is not a company in which the public are substantially interested within the meaning of sub-section (1), the accumulated profits of the company of the period from the end of the last previous year for which it has made a return of its total income, to the date on which an order or resolution for winding it up is made shall, for the purposes of assessment of its shareholders, be deemed to have been distributed as dividend amongst the shareholders on the date of that order or resolution, and the provisions of sub-sections (3), (4), (5) and (6) shall apply in the like manner and to the same extent as they apply in the case of an order under sub-section (1).”

**26. Amendment of section 24, Act XI of 1922.**—In section 24 of the principal Act,—

(a) in sub-section (1), for the first proviso, the following provision shall be substituted, namely:—

“Provided that in computing the income, profits and gains chargeable under any head or the loss of profits and gains falling under any head, so much of any loss as would but for the loss have accrued or arisen within the State of Jammu and Kashmir, shall not be taken into account except to the extent of the amount of income, profits and gains, if any, which would be exempt under the provisions of clause (c) of sub-section (2) of section 14:

Provided further that in computing the profits and gains chargeable under the head "Profits and gains of business, profession or vocation", any loss sustained in a business consisting of speculative transactions shall not be taken into account except to the extent of the amount of profits and gains, if any, in any other business consisting of speculative transactions."

(b) in sub-section (2),—

(i) for the words "under the head 'Profits and gains of business, profession or vocation'," the words "in any business, profession or vocation" shall be substituted;

(ii) in clause (a) of the proviso, for the words "India, but outside the taxable territories" the words "the State of Jammu and Kashmir" shall be substituted;

(iii) after clause (e) of the proviso, the following clauses shall be inserted, namely:—

"(f) where the assessee is a company which is not resident in the taxable territories and the loss carried forward is a loss of profits and gains which arose without the taxable territories in any year in which the company was assessed as a resident company under sub-clause (b) of clause (c) of section 4A, such loss shall not be allowed to be set off against the profits and gains from the same business arising in the taxable territories except to the extent to which the profits and gains arising without the taxable territories have, as reduced by the amount of such losses, if any, allowed previously, been assessed in the past;

(g) where there are two or more businesses other than a business consisting of speculative transactions and the losses sustained therein cannot be wholly set off under sub-section (1), the amount of loss which has not been so set off shall, for the purposes of this sub-section, be allocated to each such business in the same proportion as the loss sustained in each such business bears to the aggregate of the losses sustained in all such businesses."

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) For the purposes of this Act,—

(i) life insurance business shall be deemed to be a distinct and separate business from any other kind of insurance business; and

(ii) where the speculative transactions carried on are of such a nature as to constitute a business, the business shall be deemed to be distinct and separate from any other business.

(iii) a speculative transaction means a transaction in which a contract for purchase and sale of any commodity including stocks and shares is periodically or ultimately

settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him shall not be deemed to be a speculative transaction."

**27. Amendment of section 24A, Act XI of 1922.**—In sub-section (1) of section 24A of the principal Act, for the words "has been assessed in his hands", the words "has been fully assessed in his hands" shall be substituted.

**28. Amendment of section 25, Act XI of 1922.**—(1) In section 25 of the principal Act,—

(a) in sub-section (1), for the words "any year, an assessment may be made in that year" the words "any financial year, an assessment may be made at the rates in force in that financial year" shall be substituted; and to the said sub-section the following proviso shall be added, namely:—

"Provided that where such period exceeds the period of the previous year relating to the assessment year following that financial year, a separate assessment may be made on the income, profits and gains of such previous year and another assessment on the income, profits and gains of the remaining period";

(b) in sub-section (3), after the words "is discontinued", the words "in the course of a previous year" shall be inserted, and for the words "the previous year", wherever they occur, the words "the immediately preceding previous year" shall be substituted;

(c) in sub-section (4), after the words "is succeeded" the words "in the course of a previous year" shall be inserted, and for the words "the previous year", wherever they occur, the words "the immediately preceding previous year" shall be substituted;

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) The benefit of sub-section (3) and sub-section (4) shall not be given to any person unless such person has, before the expiry of one year from the date on which the business, profession or vocation was discontinued or succeeded to, as the case may be, given notice of such discontinuance or succession to the Income-tax Officer concerned."

(2) The amendments made by clauses (a), (b) and (c) of sub-section (1) shall be given effect to as if they had been originally enacted.

**29. Insertion of new section 25B, Act XI of 1922.**—After section 25A of the principal Act, the following section shall be inserted, namely:—

"25B. *Liquidators, etc.*—(1) Every person, in this section referred to as the "trustee",—

(a) who is the liquidator of any company which is being wound up under the orders of a court or otherwise; or



(b) who has been appointed the receiver of any assets of a company; or

(c) who is an agent of a person not resident in the taxable territories, and has been required by his non-resident principal to wind up the business or to realise the assets of the principal,

shall, within thirty days after he has become such trustee, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company or of the non-resident person.

(2) The Income-tax Officer shall, after making such inquiries or calling for such information as he may deem fit with respect to the assets of the company or the properties in the hands of the trustee, notify to the trustee the amount which in the opinion of the Income-tax Officer would be sufficient to provide for any tax which then is or is likely thereafter to become payable by the company or the principal or the agent of the principal, as the case may be.

(3) The trustee—

(a) shall not without the leave of the Income-tax Officer part with any of the assets of the company or of the principal;

(b) shall set aside, out of the assets coming into his possession, assets to the value of the amount so notified, or the whole of such assets if they are of a value equal to or less than that amount; and

(c) shall, to the extent of the value of the assets which he is so required as aforesaid to set aside, be personally liable to pay the tax on behalf of the company or the non-resident person as the case may be.

(4) Where there is more than one trustee, the obligations and liabilities attaching to the trustee under this section shall attach to all the trustees jointly and severally.

(5) The amount notified by the Income-tax Officer under sub-section (2) shall not be called in question in any proceeding before any court under any law, and the provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

**30. Amendment of section 26A, Act XI of 1922.**—After sub-section (9) of section 26A of the principal Act, the following sub-section shall be inserted, namely:—

“(3) If the particulars contained in the application made under sub-section (2) are found to be incorrect, the registration granted to the firm under sub-section (1) for any year shall be cancelled and the firm shall, subject to the provisions of section 38B or section 84, be assessed or reassessed to tax as if it were an unregistered firm, association of persons or individual as the case may be.”

**31. Omission of section 27, Act XI of 1922.**—Section 27 of the principal Act shall be omitted.

**32. Amendment of section 28, Act XI of 1922.**—In section 28 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

‘(1) If the Income-tax Officer, the Appellate or Inspecting Assistant Commissioner, the Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, whether or not such proceedings relate to the assessment in which any default or concealment has occurred, is satisfied that any person has without reasonable cause failed to comply or has without reasonable cause failed to comply within the time allowed, if any, in that behalf, with the requirements of any notice under section 22 or section 23 or section 34 or has concealed the particulars of his income or has negligently or deliberately furnished any inaccurate or incomplete particulars in his return of total income or in any information furnished in compliance with the notice under sub-section (4) of section 22 or in any evidence furnished under section 23, he or it may direct that such person shall, in addition to the amount of income-tax and super-tax, on his total income (which amount in this sub-section is referred to as “such sum”) pay by way of penalty an amount computed as follows:—

(a) where the return of total income required by the notice under sub-section (1) of section 22 is not furnished within the time allowed by such notice but is furnished before the commencement of the next financial year, the penalty payable shall be an amount not exceeding three hundred rupees or one-fourth of such sum whichever is the less:

Provided that if a return is furnished before the commencement of the next financial year and before the issue of a notice under sub-section (2) of section 22, there shall be no penalty;

(b) where the return of total income required by the notice under sub-section (1) of section 22 is not furnished or is furnished after the commencement of the next financial year, or where the return of total income required by the notice under sub-section (2) of section 22 or section 34 is not furnished or is furnished after the time allowed by such notice, the penalty payable shall be an amount not exceeding such sum;

(c) where the return of total income required by the notice under sub-section (2) of section 22 or section 34 has not been furnished and a notice under sub-section (4) of section 22 has also not been complied with within the time allowed by the notice, the penalty payable shall be an amount not exceeding one and a half times such sum;

(d) where the return of total income has been furnished, but any notice under sub-section (4) of section 22 or sub-section (2) or sub-section (3) of section 23 has not been complied with within the time allowed by the notice, the penalty payable shall be an amount not exceeding the difference between such sum and the amount of income-tax

and super-tax, if any, which would have been payable had the income as returned, been accepted as the correct income;

(e) where a return of total income furnished is incorrect or incomplete in any material particulars, and such incorrectness or incompleteness is due to negligence, the penalty payable shall be an amount not exceeding one-half but not less than one-fourth of the amount of the difference between such sum and the amount of income-tax and super-tax, if any, which would have been payable had the income as returned been accepted as the correct income;

(f) where a return of total income or any information or evidence furnished as aforesaid is found to be deliberately incorrect or incomplete in any material particulars or where any particulars of income have been concealed, the penalty payable shall be an amount not exceeding one and a half times but not less than the difference between such sum and the income-tax and super-tax, if any, which would have been payable had the income as returned been accepted as the correct income:

Provided that—

(i) the aggregate of the amounts of penalties imposed under this sub-section shall not exceed one and a half times such sum in any case;

(ii) where the assessment in respect of which penalty is imposed is for a year which is outside the limit of time specified in section 83B, or section 84, as the case may be, the expression "such sum" shall for the purposes of computing the penalty, mean income-tax and super-tax which would have been payable on the true total income had it been assessed at the proper time, and the amount of the penalty shall not, in any case be less than the amount of income-tax and super-tax which has been avoided by such person for that year;

(iii) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income does not exceed the maximum amount not chargeable to income-tax in his case by more than one thousand rupees, unless he has been served with a notice under sub-section (2) of section 22;

(iv) where a person has failed to comply with the notice under sub-section (2) of section 22 or section 84, and proves that he has no income liable to tax, the penalty imposed under this sub-section shall be a penalty not exceeding twenty-five rupees;

(v) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in the taxable territories for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 84 has been served on him;

(vi) where the person liable to penalty is a registered firm whose registration in consequence of proceedings under this section has not been cancelled, or is an unregistered firm treated under clause (b) of sub-section (5) of section 28 as a registered firm, so that the amount of the income-tax and super-tax payable by the firm itself has not been determined, the amount of penalty payable by the registered firm shall be that amount which would have been payable had such firm been assessed as an unregistered firm.”;

(b) in sub-section (2),—

(i) for the words “Appellate Assistant Commissioner or the Appellate Tribunal” the words “Appellate or Inspecting Assistant Commissioner, the Commissioner or the Appellate Tribunal” shall be substituted;

(ii) after the words “proceedings under this Act” the words “whether or not such proceedings relate to the assessment of which the distribution of profits is in question” shall be inserted; and

(iii) for the words “he or it may direct” the words “he or it may, if the registration of the firm has not been cancelled, direct” shall be substituted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A If the Income-tax Officer the Appellate or Inspecting Assistant Commissioner, the Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, whether or not such proceeding relate to the assessment in which the abetment occurred, is satisfied that any person has knowingly or wilfully abetted another person to commit a default or to do anything which has rendered that other person liable to any penalty under sub-section (1) or sub-section (2) he or it may direct that such first-mentioned person shall, without prejudice to any action that may be taken against him under this Act or under any other law, pay a penalty of an amount not exceeding the amount of penalty which has been imposed on that other person or five thousand rupees whichever is the less:

Provided that no such penalty shall be imposed unless such first mentioned person has been heard, or has been given a reasonable opportunity of being heard:

Provided further that where the first mentioned person is a member of a firm constituted for the exercise of a profession or vocation, each member of the firm shall be jointly and severally liable for the penalty levied under this section.”;

(d) in sub-section (5), for the words, brackets and figures, “Appellate Assistant Commissioner or the Appellate Tribunal on making an order under sub-section (1) or sub-section (2)” the following shall be substituted, namely:—

“Appellate or Inspecting Assistant Commissioner, the Commissioner or the Appellate Tribunal on making an order under sub-section (1), sub-section (2) or sub-section (2A)”;

(e) after sub-section (6), the following sub-section shall be inserted, namely:—

“(7) Where a penalty under sub-section (1), sub-section (2) or sub-section (2A) has been imposed upon any person, the Income-tax Officer may, with the previous sanction of the Commissioner, publish the name, address and other particulars relating to that person or his affairs in such manner as may be specified by the Central Board of Revenue.”

**33. Amendment of section 30, Act XI of 1922.**—In section 30 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any assessee—

(i) objecting to the amount of income assessed or the amount of tax determined, as the case may be, under section 23, or to the amount of loss computed under section 24, or

(ii) objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of section 28, or to a refusal to register a firm under sub-section (4) of that section or section 28A, or

(iii) objecting to an order made by an Income-tax Officer under sub-section (2) of section 25 or section 25A or sub-section (2) of section 26 or section 28, or

(iv) objecting to an order of rectification or of refusal to rectify made by an Income-tax Officer under section 35, or

(v) objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (1) of section 46, or

(vi) objecting to a refusal by an Income-tax Officer to allow a claim to a refund under section 48 or section 49E, or objecting to the amount of the refund allowed by an Income-tax Officer under any of those sections, or

(vii) denying his liability to be assessed under this Act, or

(viii) being a company, objecting to an order made by the Income-tax Officer under sub-section (1) of section 28A, may appeal to the Appellate Assistant Commissioner against the assessment, refusal or order as the case may be:

Provided that no appeal shall lie—

(a) against an order passed by an Inspecting Assistant Commissioner, when exercising the powers of the Income-tax Officer in pursuance of a direction given by the Commissioner under sub-section (5) of section 5;

(b) against an order under sub-section (1) of section 46, unless the tax has been paid within the time specified in the notice of demand for penalty;

(c) against any order in respect of an assessment, if, on an application made by the Income-tax Officer in this behalf, the Appellate Assistant Commissioner is of the opinion that the assessee has not paid such amount of the tax due or furnished such security or banker's guarantee for payment of tax as appears to him to be reasonable in the circumstances:

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may, on behalf of the firm and after obtaining the signatures of the other partners to the petition, appeal to the Appellate Assistant Commissioner against any order of the Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, and the result of such appeal shall be binding on all the partners, and no partner shall, in any appeal relating to the assessment of his own total income, be entitled to raise any question in respect of matters determined by any order of the Income-tax Officer or by the Appellate Assistant Commissioner as a result of any appeal under this proviso.”;

(b) in sub-section (1A), the brackets, figures, letters and word “(3A)” and “or (3C)” shall be omitted;

(c) in sub-section (2), for the words, figures and letter “to register a firm under section 26A or of the date of the refusal to make a fresh assessment under section 27,” the following shall be substituted, namely:—

“or of the intimation of the order refusing to register, or cancelling the registration of, a firm under sub-section (4) of section 28 or section 26A.”

**34. Amendment of section 31, Act XI of 1922.**—In section 31 of the principal Act,—

(a) in sub-section (2A), after the words “not wilful or unreasonable” the following shall be inserted, namely:—

“and the consideration of that ground does not involve the production of any evidence contrary to the provisions contained in sub-section (2B).”;

(b) after sub-section (2A), the following sub-section shall be inserted, namely:—

“(2B) The Appellate Assistant Commissioner shall not, at the instance of the appellant, allow any evidence, whether oral or documentary, to be produced, which was not produced before the Income-tax Officer notwithstanding that the appellant was required specifically so to do by the Income-tax Officer, acting under this Act or which the appellant could with due diligence have produced before the Income-tax Officer but did not so produce in response to a notice under sub-section (2) of section 23:

Provided that the Appellate Assistant Commissioner may, after recording his reasons for so doing, allow to be produced any

additional evidence which may be necessary to enable him to dispose of the appeal, including the passing of an order therein enhancing an assessment.”;

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) In disposing of an appeal, the Appellate Assistant Commissioner may—

(i) in the case of an order of assessment—

confirm, reduce, enhance, amend or set aside the assessment, or set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer may think fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(ii) in the case of an appeal against a computation of loss under section 24—

confirm or vary such computation;

(iii) in the case of an order cancelling or refusing the registration of a firm under sub-section (4) of section 28 or section 26A—

confirm such order or cancel it and direct the Income-tax Officer to register the firm and to assess the partners separately on their respective shares;

(iv) in the case of an order under sub-section (2) of section 25 or sub-section (1) of section 23A, or sub-section (2) of section 26 or section 48 or section 49F—

confirm, cancel or vary such order, and, in the case of an appeal against an order under sub-section (2) of section 26, direct a consequential modification of the assessments of the predecessors and the successors concerned;

(v) in the case of an order under sub-section (1) of section 25A,—

confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25A;

(vi) in the case of an order under section 28, or sub-section (6) of section 44E, or sub-section (5) of section 44F, or sub-section (1) of section 46—

confirm or cancel such order or vary it so as either to enhance or reduce the penalty;

(vii) in the case of an appeal under sub-section (1A) of section 80—

decide that the person is or is not liable to make the deduction and in the latter case direct the refund of the sum paid under sub-section (6) of section 18:

Provided that the Appellate Assistant Commissioner shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement:

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative or to submit in duplicate a brief statement in writing of his arguments or objections a copy of which shall be furnished to the appellant at the time of hearing of the appeal.”;

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Every order passed on appeal by the Appellate Assistant Commissioner shall contain a clear specification of the relief, if any, granted and the precise effect thereof on the assessment or on the order appealed against, and a copy of the order shall be sent to the assessee and the Commissioner.”

**35. Amendment of section 33, Act XI of 1922.**—In section 33 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“33. *Appeals to Appellate Tribunal.*—(1) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 or to an order passed by an Inspecting Assistant Commissioner or Commissioner under section 23, may appeal to the Appellate Tribunal within sixty days of the date on which a copy of the order is received by him.

(1A) Any assessee objecting to any such order as is referred to in sub-section (1) of section 80, passed by an Inspecting Assistant Commissioner when exercising the powers of an Income-tax Officer, may appeal to the Appellate Tribunal within the time specified in sub-section (2) of that section, and the provisions of sections 80 and 81 shall, so far as may be, apply to such appeal as they apply to an appeal to the Appellate Assistant Commissioner from an order of the Income-tax Officer.”;

(b) in sub-section (2), for the words “the order is communicated to the Commissioner by” the words “a copy of the order is received by the Commissioner from” shall be substituted;



(c) sub-section (2A) shall be renumbered as sub-section (2B) and before the sub-section as so renumbered, the following sub-section shall be inserted, namely:—

“(2A) The Income-tax Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the service upon him of the notice, file a memorandum of cross objections against any part of the order of the Appellate Assistant Commissioner and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time under sub-section (1) or sub-section (2), as the case may be.”;

(d) in sub-section (2B) as so renumbered, after the words “admit an appeal” the words, figure, letter and brackets “other than an appeal under sub-section (1A)” shall be inserted;

(e) in sub-section (4), for the words “and shall communicate any such orders to the assessee and to the Commissioner” the words, figures, letter and brackets “and shall send a copy of any such orders to the assessee and to the Commissioner, and the provisions of sub-sections (2B), (3) and (5) of section 81 shall, so far as may be, apply to the orders and proceedings of the Appellate Tribunal” shall be substituted.

**36. Amendment of section 34, Act XI of 1922.**—In the second proviso to sub-section (3) of section 34 of the principal Act, for the words and figures “to a reassessment made under section 27 or in pursuance of” the word “to an assessment or reassessment made in consequence of, or to give effect to any finding or direction contained in” shall be substituted.

**37. Amendment of section 35, Act XI of 1922.**—In section 35 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

“(5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or reassessment of the firm or on any reduction or enhancement made in the income of the firm under section 81, section 38, section 38A, section 33B, section ~~33~~ or section 66A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm.

(6) Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or other proceeding [whether before or after the commencement of the Indian Income-tax

(Amendment) Act, 1951], and in consequence thereof it is necessary to recompute the total income of the assessee chargeable to income-tax, such recomputation shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply accordingly, the period of four years referred to in that sub-section being computed from the date of the order modifying the assessment of such excess profits tax or business profits tax.

*Explanation.*—For the purposes of sub-section (6), where the assessee is a firm, the provisions of sub-section (5) shall also apply as they apply to the rectification of the assessment of the partners of the firm."

**38. Substitution of new sections for section 37 in Act XI of 1922.**—For section 37 of the principal Act, the following sections shall be substituted, namely:—

"37. *Power to take evidence on oath, etc.*—(1) Subject to any rules made in this behalf by the Central Government by notification in the Official Gazette, every income-tax authority shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents;

(c) issuing commissions for the examination of witnesses.

(2) Any income-tax authority may impound and retain in its custody, for such period as it thinks fit, any books of account or other documents produced before it in any proceeding under this Act.

(3) Any proceeding before an income-tax authority or Appellate Tribunal under this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and every such authority shall be deemed to be a revenue court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

**37A. *Power to enter premises, etc.***—(1) Any income-tax authority not below the rank of Assistant Commissioner and, if specially authorised in this behalf by any other income-tax authority, an Income-tax Officer may—

(i) enter any building or place, whether belonging to the person liable to assessment or otherwise, if it or he has reason to believe that any books of account or other documents of any such person may be found therein;

(ii) seize any such books of account or documents or place marks of identification thereon or make extracts or copies therefrom;

(iii) make a note or an inventory of any other article or thing found in the course of the search which in its or his opinion may be useful for or relevant to any of the purposes of this Act,

and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to searches, so far as may be, shall apply to searches made under the authority of this sub-section:

Provided that where in the opinion of an Income-tax Officer of Class I service it is not practicable to obtain the special authorisation of any other income-tax authority before proceeding to act under this section, he may exercise any of the powers given by this sub-section without such previous authorisation, and where he does so, he shall forthwith make a report thereof in writing to the Inspecting Assistant Commissioner stating the reasons which called for the exercise of such powers without obtaining such previous authorisation.

(2) Notwithstanding anything contained in sub-section (1) but without prejudice to the provisions contained therein, it shall be lawful for any income-tax authority to enter at all reasonable times any building or place belonging to or occupied by any person liable, or believed by it to be liable to assessment for the purpose of making any inquiry which, in the opinion of that authority, would be useful for the purposes of this Act, and the authority may examine the books of account or other documents of such person and place marks of identification thereon or make extracts or copies therefrom.

(3) Notwithstanding anything in any other law to the contrary, every person shall be bound—

(a) to produce to the income-tax authority such books of account or other documents in his charge or custody as he may be required to produce;

(b) to give to the authority any information in his possession in respect of the books of account or other documents which may be required;

(c) to prepare such statements for, or furnish such information to, the authority as may be required;

(d) to answer all questions which may be put to him by the authority."

**39. Amendment of section 38, Act XI of 1922.**—Section 38 of the principal Act shall be renumbered as sub-section (1) thereof, and in sub-section (1) as so renumbered,—

(a) for clause (1), the following clause shall be substituted, namely:—

"(1) require any Hindu undivided family, firm, or association of persons to furnish him with a return of the names and such other particulars of the members as may be prescribed;";

(b) for clause (3), the following clause shall be substituted, namely:—

"(3) require any person to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent,

premium, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head "salaries", or any other sum chargeable under the Act amounting to more than four hundred rupees, together with particulars of all such payments made;"

(c) after clause (4), the following clauses shall be inserted, namely:—

"(5) require any person doing or managing any business on behalf of another person not resident in the taxable territories or having any business connection with such other person within the meaning of section 42 to furnish a statement of the names and addresses of all such persons on whose behalf he has done business in the taxable territories or with whom he has such business connection in any year;

(6) require any banking or insurance company, notwithstanding anything in any law to the contrary, to furnish a statement of the names and addresses of all persons who have made deposits or have taken loans or overdrafts or who have made remittances or who have taken policies in any year of such amount as may be prescribed together with particulars of the deposits, loans, overdrafts, remittances, policies and of the securities and other property lodged with the banking or insurance company, as the case may be;

(7) require any chartered accountant to furnish a statement of the names and addresses of the businesses and of the proprietors thereof whose accounts were audited by him in any year together with the particulars of the period to which the accounts relate and the scope of such audit;

(8) require any person who owns jointly with other persons any security, stocks, shares or deposits or property to furnish a statement of the names and addresses of all persons who have a beneficial interest therein and the extent of such beneficial interest;

(9) require any person maintaining a safe deposit vault to furnish the names and addresses of all persons who have or had at any time hired lockers or have lodged any property for safe custody;

(10) require any person to furnish such information or evidence which may directly or indirectly be useful for or relevant to any assessment made or to be made";

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Any return or statement required under sub-section (1) shall be in the prescribed form and verified in the prescribed manner."

**40. Amendment of section 41, Act XI of 1922.**—In sub-section (1) of section 41 of the principal Act,—

(i) after the words and figures "the Mussalman Wakf Validating Act, 1913," the words "or the Shabait or other manager of a property held under a private religious trust or an endowment or any other legal obligation" shall be inserted;

(ii) for the first proviso, the following proviso shall be substituted, namely:—

“Provided that in the following cases the tax on such income, profits and gains shall be levied and recoverable at the maximum rate, namely:—

(i) where the income, profits and gains are receivable on behalf of or for the benefit of an artificial or juridical person;

(ii) where the income, profits and gains are not specifically receivable on behalf of any individual; or

(iii) where the income, profits and gains are receivable on behalf of or for the benefit of more than one person, and the relevant document or record, if any, does not specify the separate share of each person; unless the persons, none of them being an artificial or juridical person, have no other personal income chargeable under this Act, in which case the tax shall be levied and recoverable, as if such income, profits and gains or such part thereof were the total income of an association of persons:”.

**41. Amendment of section 42, Act XI of 1922.**—In section 42 of the principal Act,—

(a) for the words beginning with “All income” and ending with the words “the assessee in respect of such income-tax:” the following shall be substituted, namely:—

“Save as otherwise provided in sub-section (1) of section 4, all income, profits or gains accruing or arising, whether directly or indirectly through or from any business connection in the taxable territories, or through or from any property in the taxable territories, shall be deemed to be income accruing or arising within the taxable territories, and where the person entitled to the income, profits or gains is not resident in the taxable territories, he shall be chargeable to income-tax either in his own name or in the name of his agent treated as such under section 48, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax, all income, profits or gains of such person chargeable in the taxable territories, whether receivable by him direct or through or from any other person, being assessed in the name of such agent:”;

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) Where a notice under sub-section (2) of section 22 or section 84 has been issued for the purposes of making an assessment in the case of a person not resident in the taxable territories (whether such notice is issued to him direct or to his agent treated as such under section 48), the Income-tax Officer may, if he thinks that the circumstances of the case so require, issue, pending completion of the assessment, an order prohibiting any person holding any assets of, or from whom any money is due to, the

person not resident, from transferring such assets or paying such money to the person not resident or to any other person on his behalf, and any such order issued by the Income-tax Officer shall be in force for such period as may be specified in the order and shall have the same effect as an attachment by the Collector in the exercise of his powers under the proviso to sub-section (2) of section 46.

(1B) If any person to whom an order under sub-section (1A) has been issued fails to comply therewith, he shall be personally liable for the payment of the tax due on the total income of the person not resident to the extent of the value of the assets or the money so held or payable by him, and, for the purposes of Chapter VI of this Act, such person shall be deemed to be an assessee in default.”;

(c) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where a person carries on business in the taxable territories and it appears to the Income-tax Officer that, owing to the close connection between such person and another person who is not resident and is not chargeable in the taxable territories, the business carried on in the taxable territories produces to such first mentioned person either no profits in the taxable territories or less than the ordinary profits which might be expected to arise in the taxable territories in that business, such first mentioned person shall be chargeable to tax on such amount of profits as might reasonably have been expected to arise or deemed to arise in the taxable territories but for the close connection between him and the other person.”;

(d) in sub-section (3), for the words “shall be” the words “shall, subject to any rules made in this behalf by the Central Board of Revenue for any such business or class of business, be” shall be substituted.

**42. Amendment of section 44, Act XI of 1922.**—Section 44 of the principal Act shall be renumbered as sub-section (1) thereof, and after that sub-section as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), where, in respect of the profits and gains of any previous year, whether such previous year is the previous year for the assessment for the year ending on the 31st day of March, 1952, or is the previous year for the assessment for any year prior or subsequent thereto, tax is or has been assessed on a company, whether before or in the course of or after its liquidation, if any, and any such tax cannot be recovered from the company, then—

(i) every person who is or was a shareholder of the company at any time during the relevant previous year, and

(ii) every other company whose shares carrying not less than ninety per cent. of the voting power are or were owned directly

or indirectly by the first mentioned company at the end of the relevant previous year,

shall be jointly and severally liable for the payment of the tax, and shall, for the purposes of sections 45 and 46, be deemed to be an assessee in default:

Provided that clause (i) of this sub-section shall not apply where the company is, within the meaning of the *Explanation* to sub-section (7) of section 23A, deemed to be a company in which the public are substantially interested."

**43. Substitution of new Chapter for Chapter VA in Act XI of 1922.**—For Chapter VA of the principal Act, the following Chapter shall be substituted, namely:—

#### "CHAPTER VA.

##### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPS AND AIRCRAFT.

**44A. Liability to tax on ships or aircraft in respect of occasional trips.**—The provisions of this Chapter shall, notwithstanding anything contained in any other provision of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of the taxable territories and carries on business in the taxable territories in any year as the principal owner or charterer of a ship or of an aircraft (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer—

(a) in the case of the principal of a ship, is satisfied, or

(b) in the case of the principal of an aircraft, has notified the Customs Collector or other officer authorised in this behalf by the Customs Collector,

that there is an agent of such principal from whom the tax will be recoverable in the following year under the provisions of this Act.

**44B. Return of profits and gains.**—(1) Before the departure from any port in the taxable territories of any ship, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal or to any person on his behalf on account of the carriage of all passengers, livestock or goods shipped at that port since the last arrival of the ship thereat.

(2) Before the departure from any customs aerodrome in the taxable territories of any aircraft, the pilot or other person in charge of the aircraft shall prepare and furnish to the Customs Collector or other officer authorised by the Customs Collector in this behalf a return of the full amount of the fare and freight paid or payable to the principal or to any person on his behalf on account of the carriage of all passengers, livestock or goods booked by the aircraft in the taxable territories since the last of such returns, if any, was made.

(3) On receipt of the return, the Income-tax Officer, if the matter relates to a ship and the Customs Collector or other officer, if the matter relates to an aircraft, shall assess the amount referred to in sub-section (1) or, as the case may be, in sub-section (2), and may

for this purpose call for or inspect such accounts or documents as he may require, and the amount of the profits and gains accruing to the principal shall—

(a) where it relates to the carriage of the passengers, livestock and goods shipped at the port, be deemed to be one-sixth of the amount so assessed, and

(b) where it relates to the carriage of the passengers, livestock and goods booked at the aerodrome, be deemed to be one-sixteenth of the amount so assessed.

(4) When the profits and gains have been assessed as aforesaid, the Income-tax Officer, Customs Collector or other officer, as the case may be, shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship or, as the case may be, the pilot or other person in charge of the aircraft, and a port-clearance shall not be granted to the ship or aircraft until the Customs Collector, or other officer authorised in this behalf by the Customs Collector or any other officer duly authorised to grant the same is satisfied that the tax has been duly paid.

(5) Every Customs Collector and any other officer authorised in this behalf by the Customs Collector who has collected any sums under this Chapter shall, within such time and in such manner as may be prescribed by the Central Board of Revenue, pay the amount so collected to the credit of the Central Government and shall also furnish to the Income-tax Officer such statements and information in this behalf as may be prescribed.

44C. *Adjustment*.—Nothing in this Chapter shall be deemed to prevent the principal from claiming in any financial year that a regular assessment be made of his total income of the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, he shall be entitled to credit for any payment made during the previous year, and the difference between the sum so paid and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be."

44. Amendment of section 44D, Act XI of 1922.—In section 44D of the principal Act,—

(a) in sub-section (1), the words "or to a person resident but not ordinarily resident" shall be omitted;

(b) in sub-section (2), the words "or resident but not ordinarily resident" shall be omitted.

45. Insertion of new section 44G in Act XI of 1922.—In Chapter VB, after section 44F of the principal Act, the following section shall be inserted, namely:—

"44G. *Liability to tax in the case of unknown shareholders, depositors, etc.*—(1) Where an Income-tax Officer is of the opinion that any person registered as shareholder or debenture holder of a company or shown as depositor or creditor in the books of a company or of any other person is either not in existence or not traceable at



the address, if any, given in the books of the company or in the books of that other person, or that the registered shareholder, debenture holder, depositor or creditor disowns the share, debenture, deposit or credit, the Income-tax Officer may, by notice, require the company or that other person, as the case may be, to take steps in the prescribed manner to trace the shareholder, debenture holder, depositor or creditor, as the case may be, and thereupon such share, debenture, deposit or credit shall not be dealt with in any manner by the company or that other person except with the written authority of the Income-tax Officer.

(2) If before the expiry of two years from the date of the notice referred to in sub-section (1), the company or the other person is not able to prove to the satisfaction of the Income-tax Officer the identity, existence and address of the shareholder, debenture holder, depositor or creditor, as the case may be, the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, pass an order accordingly, and thereupon the entire value of such share, debenture, deposit or credit shall, notwithstanding any time-limit specified in section 84, be deemed to have been the tax evaded by the unknown person who is the shareholder, debenture holder, depositor or creditor, as the case may be, and within one week of the date on which the company or that other person is served with a copy of the Income-tax Officer's order—

(a) the company shall cancel the original share certificate or debenture bond, and issue a duplicate share certificate or debenture bond in the name of, and

(b) in the case of a deposit or credit, the company or other person shall transfer the same to

the Reserve Bank of India for and on behalf of the Consolidated Fund of India:

Provided that the Income-tax Officer may, for good and sufficient cause, extend the time for transferring a deposit or credit under this sub-section.

(3) Any company which has issued a duplicate share certificate or debenture bond or any company or other person who has transferred his deposit or credit within the time specified in sub-section (2) or within such further time as may have been allowed by the Income-tax Officer, shall be indemnified against all claims that may be made in respect of the cancellation of the original share certificate or debenture bond and the issue of duplicate certificate or bond, or the transfer of the amount of deposit or credit, if the company or the other person, within one month of the date of the notice referred to in sub-section (1), publishes or causes to be published in the Gazette of India and in a daily newspaper a notice in the prescribed form calling upon the registered shareholder, debenture holder, depositor or creditor to prove before the Income-tax Officer having jurisdiction his identity and his title (and such further facts as may be required by the notice to be proved) to the share, debenture, deposit or credit, as the case may be.

(4) Any company or any other person who does not comply with the requirements of sub-section (1) or sub-section (2) in respect of the issue of duplicate share certificate or debenture bond, or the transfer of the amount at deposit or credit, shall be deemed to be an assessee in default

in respect of the entire value of such share, debenture, deposit or credit and all the provisions of this Act shall apply accordingly.

(5) Any person claiming himself to be entitled to any share, debenture, deposit or credit in respect of which the Income-tax Officer has passed an order under sub-section (2), may, within thirty days of the date on which the company or the other person has been served with a copy of the Income-tax Officer's order, appeal to the Appellate Assistant Commissioner of Income-tax, in the same manner as if he were denying his liability to be assessed under this Act and all the provisions of this Act, shall apply accordingly."

**46. Insertion of new section 45A in Act XI of 1922.**—After section 45 of the principal Act, the following section shall be inserted, namely:—

*"45A. Liability for tax in respect of income from certain assets included in the total income of persons other than ostensible owners, etc.*—Where in accordance with the provisions of clause (c) of sub-section (1) or sub-section (3) of section 16 or section 44D or for any other reason, the income from any assets or dealings in such assets is included in the total income of any person who is not the ostensible or legal owner of such assets, then, notwithstanding the provisions contained in any other law for the time being in force, the tax in respect of the income so included may be recovered from the ostensible or legal owner of those assets:

Provided that no such recovery shall be made unless the ostensible or legal owner had notice of the assessment proceedings at any time before the assessment was made whereby the income came to be so included in the total income of that other person."

**47. Amendment of section 46, Act XI of 1922.**—In section 46 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

'(1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may—

(a) direct, in his discretion, that in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty;

(b) with the previous approval of the Commissioner, publish, in such manner as may be prescribed the name and address of, and the amount of arrears and penalty due from, the assessee in default.

*Explanation.*—For the purposes of this section, the word "arrears", in any case in which an assessee has been allowed to pay any demand payable under this Act by instalments (whether by an income-tax authority or by the Collector) and has made default in the due payment thereof, means the aggregate of the amount of all the instalments still remaining to be paid after the date of the default.';

(b) after sub-section (1A), the following sub-section shall be inserted, namely:—

“(1B) Where an assessee dies before payment of the income-tax or penalty due from him, the income-tax and penalty due may be recovered from his executor, administrator or other legal representative and for the purposes of this section, such executor, administrator or other legal representative shall be deemed to be the assessee in default and all proceedings may be taken or continued against him accordingly:

Provided that the liability under this section of the executor, administrator or other legal representative shall be limited to the extent to which the estate of the deceased which has come into his hands is capable of meeting the charge.”;

(c) in sub-section (5A), for the last paragraph, the following paragraph shall be substituted, namely:—

“Where a person to whom a notice under this sub-section is sent, objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee or that a third person has a lien or charge on, or other interest in, such sum, the Income-tax Officer shall proceed to investigate the objection, and, if after making such investigation thereinto as he thinks fit, he is satisfied that the objection is wholly or partly proved, he shall rescind or modify the notice issued by him under this sub-section and if he is satisfied that the objection has not been proved, he shall disallow the objection, in which case the notice given shall be effective until the Income-tax Officer's finding is set aside by a civil court:

Provided that where any investigation under this paragraph concerns the lien or charge of a third person, no such investigation shall be made until such person has been given notice thereof and an opportunity to adduce evidence in support of his claim.”;

(d) after sub-section (5A), the following sub-sections shall be inserted, namely:—

“(5B) The Income-tax Officer may, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer), prohibit any person holding in his custody any assets belonging to the assessee from parting with them, either in favour of the assessee or any other person, and any such notice shall have the same effect as if it were an attachment by the Collector in exercise of his powers under the proviso to sub-section (2).

(5C) If any person to whom a notice under sub-section (5B) is sent, fails to comply with the notice and parts with the assets, he shall be deemed to be an assessee in default, so however that the extent of his liability shall not exceed the value of the assets he has so parted with:

Provided that if any such person parts with the assets in favour of the assessee in any case where the particulars of the assets have not been disclosed to him by the assessee, whether

at the time when the assets were placed in his custody or at any time subsequent thereto, he shall be deemed to have committed an offence under this sub-section and on conviction before a magistrate, be punishable with imprisonment which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.”;

(e) to sub-section (7) the following *Explanation* shall be added, namely:—

*Explanation.*—“A proceeding for the recovery of any sum” shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, and, for the removal of doubts, it is hereby declared that the several modes of recovery specified in this section are not mutually exclusive and do not in any way affect any other law for the time being in force relating to the recovery of debts due to Government.”

**48. Insertion of new section 48A in Act XI of 1922.**—After section 48 of the principal Act, the following section shall be inserted, namely:—

*“48A. Persons leaving India to obtain tax clearance certificates.—*

(1) Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India or who, even if domiciled in India at the time of his departure, has, in the opinion of an income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (in this section referred to as the “competent authority”) a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (XV of 1940), or the Business Profits Tax Act, 1947 (XXI of 1947), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

Provided that if the competent authority is satisfied that such person intends to return to India, he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside the territory, allows any person to whom sub-section (1) applies, to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the amount of tax, if any, which is or may be payable by such person and shall also be punishable with fine which may extend to two thousand rupees.

*Explanation.*—For the purposes of this sub-section the expressions “owner” and “charterer” include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the

case may be, shall be deemed to be an assessee in default within the meaning of sub-section (1) of section 46 of this Act.

(4) The Central Government may make rules for regulating any matter necessary for or incidental to the purpose of carrying out the provisions of this section.'

**49. Amendment of section 49D, Act XI of 1922.**—For section 49D of the principal Act, the following section shall be substituted, namely:—

*'49D. Relief in respect of income accruing or arising outside the taxable territories.*—(1) If any person who is resident in the taxable territories in any year proves that, in respect of his income which accrues or arises during that year without the taxable territories (and which is not deemed to accrue or arise in the taxable territories) he has paid in any country with which there is no reciprocal arrangement for relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower.

(2) The Central Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall also apply in relation to any such income accruing or arising in the United Kingdom and chargeable under this Act for the assessment for the year ending on the 31st day of March, 1950, or for the year ending on the 31st day of March, 1951.

*Explanation.*—In this section,—

(i) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(ii) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the other provisions of this Act but before deduction of any relief due under this section, by the total income;

(iii) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after deduction of all reliefs due, divided by the whole amount of the income assessed in the said country.'

**50. Amendment of section 49E, Act XI of 1922.**—In section 49E of the principal Act, for the words "against the tax" the words "against the tax, interest or penalty" shall be substituted.

**51. Substitution of new section for section 51, Act XI of 1922.**—For section 51 of the principal Act, the following section shall be substituted, namely:—

*"51. Failure to make payments or deliver returns or statements, etc.*—If a person fails without reasonable cause or excuse—

(a) to deduct and pay tax as required under section 18 or sub-section (5) of section 46;

(b) to furnish a certificate required under sub-section (9) of section 19 or section 20;

(c) to furnish in due time any of the returns mentioned in section 19A, section 20A, section 21, sub-section (2) of section 22, or section 38;

(d) to furnish in due time the return required under sub-section (1) of section 22 in any case where the total income exceeds the amount not chargeable to income-tax by two thousand rupees provided the failure was also wilful;

(e) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice;

(f) to comply with any provisions of section 25B or fails as a trustee duly to pay the tax for which he is liable under the said section;

(g) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a magistrate, be punishable with fine which may extend to ten rupees or with imprisonment for one day for every day during which the failure continues."

**52. Substitution of new section for section 52, Act XI of 1922.**—For section 52 of the principal Act, the following section shall be substituted, namely:—

*"52. False statement in declaration.*—(1) If a person makes a statement in a verification mentioned in section 19A or section 20A or section 21 or sub-section (2) of section 26A or sub-section (3) of section 30 or sub-section (3) of section 33A or sub-section (2) of section 38 which is false or incomplete, and which he either knows or believes to be false or incomplete, or does not believe to be true or complete, he shall, on conviction before a magistrate, be punishable with simple imprisonment which may extend to six months and with fine which shall not be less than one thousand rupees.

(2) If a person makes a statement in a verification mentioned in sub-section (1) or sub-section (2) of section 22 which is false or incomplete and which he either knows or believes to be false or incomplete or does not believe to be true or complete, or produces or causes to be produced accounts or documents in response to a notice under sub-section (4) of the said section or sub-section (2) of section 23, which are false and which he either knows or believes to be false or does not believe to be true, he shall on conviction before a magistrate, be punishable with rigorous imprisonment which may extend to seven years but which shall not be for less than three years and with fine which shall not be less than the amount of the tax which would have been lost or the refund which would have been allowed in excess, had the verification or the accounts or documents been accepted at their face value.

(3) The provisions of sections 233 and 234 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not apply to the trial of offences under this section or to the trial of offences under sections 198, 196 and 228 of the Indian Penal Code (Act XLV of 1860) where the offences are committed in the course of assessment or refund or recovery proceedings relating to one and the same year of assessment of one and the same person, and for the purposes of section 235 of

the Code of Criminal Procedure, 1898, all acts done in the course of such proceedings shall be deemed to form the same transaction."

**53. Insertion of new section 52A in Act XI of 1922.**—After section 52 of the principal Act, the following section shall be inserted, namely:—

"52A. *Abetment.*—If a person abets the commission of a default or the doing of anything by another person whereby the other person is rendered liable to prosecution under section 51 or section 52, the person abetting shall, on conviction before a magistrate, be punishable with the punishment provided for the offence abetted."

**54. Substitution of new section for section 53, Act XI of 1922.**—For section 53 of the principal Act, the following section shall be substituted, namely:—

"53. *Sanction to prosecute and compounding of offences.*—(1) No court shall take cognizance of an offence under section 51 or section 52 or section 52A except with the previous sanction of either the Appellate Tribunal or an income-tax authority not below the rank of an Assistant Commissioner.

(2) Before granting sanction under sub-section (1), the Appellate Tribunal or the income-tax authority, as the case may be, may call upon the person concerned to show cause why he should not be prosecuted for the offence alleged to have been committed by him and may, if it so thinks fit, compound, with the previous approval of the Central Government, any such offence and any sum payable under any such composition may be recovered under this Act as an arrear of income-tax."

**55. Amendment of section 54, Act XI of 1922.**—In sub-section (3) of section 54 of the principal Act,—

(i) for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) of any such particulars in connection with a prosecution under the Indian Penal Code (Act XLV of 1860) or under this Act, in respect of any matter arising in the course of the execution of this Act, or

(b) of any such particulars to any person acting in the execution of this Act or of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the Taxation on Income (Investigation Commission) Act, 1947,";

(ii) in clause (d), after the word "Government" the words "or any person acting in the execution of this Act" shall be inserted;

(iii) in clause (gg), the words "in connection with income-tax proceedings" shall be omitted and for the words "registered accountant" the words "chartered accountant" shall be substituted;

(iv) in clause (p), for the word and figures "Ordinance, 1949", the word and figures "Act, 1950", and for the words "said Ordinance" the words "said Act, or" shall be substituted;

(v) after clause (p), the following clauses shall be inserted, namely:—

“(q) of any such particulars to the Advocate General where the Income-tax Officer has reason to believe that there has been a breach of trust relating to property held under trust or other legal obligation for religious or charitable purposes to enable the Advocate General to take such action as he may think fit, or

(r) of any such particulars of an incriminatory character to any authority or court, legally entitled to take action in respect thereof, where such particulars have been furnished by the person with a view to reduce his liability to tax or to secure any other advantage under this Act, or

(s) of any statements to any person or court, if the statements made by the assessee are of such a nature as enables another person to establish his right or title to any property or assets, or

(t) with the previous sanction of the Commissioner, of any such particulars to any person, where the Income-tax Officer considers that that person would be in a position to help him in the detection of any concealed income, or

(u) of any such particulars as may be necessary for the purposes of sub-section (7) of section 28 or of sub-section (1) of section 46 of this Act, or

(v) of any such particulars to any department of the Central Government, or the Government of a State or to any court or to any local authority or a chamber of commerce with a view to enabling that Government or authority or court or chamber to confer upon or withdraw from any person any privilege, patronage, office, position of trust or benefit of any kind.”

**56. Amendment of section 58C, Act XI of 1922.**—In sub-section (1) of section 58C of the principal Act,—

(i) to clause (d) the following proviso shall be added, namely:—

“Provided that the fund may consist also of the accumulated balance due to an employee who has ceased to be an employee, and of interest (simple and compound) in respect thereof where such balance is retained in the fund in accordance with the provisions of clause (g).”;

(ii) in clause (g), after the words “maintaining the fund” the words “unless at the request of the employee made in writing the whole or a part of the accumulated balance due to him is retained in the fund to be drawn by him at any time on demand” shall be inserted.

**57. Amendment of section 58P, Act XI of 1922.**—Section 58P of the principal Act shall be renumbered as sub-section (1) thereof, and in that sub-section as so renumbered, for the words “the following conditions shall be satisfied” the words “it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rules



prescribe" shall be substituted, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) Where there is a repugnancy between any rules of an approved superannuation fund or the terms of the instrument under which the fund is established and any provisions of this Chapter or of the rules made thereunder, the rules of the fund or the terms of the instrument under which the fund is established shall, to the extent of the repugnancy, be of no effect; and the Central Board of Revenue may at any time require that such repugnancy shall be removed from the rules of the fund or the terms of the instrument, as the case may be."

**58. Amendment of section 58S, Act XI of 1922.**—In section 58S of the principal Act,—

(a) in sub-section (2), the words "but not at or in connection with the termination of his employment" shall be omitted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Where a lump sum is paid to an employee or a former employee in commutation of or in lieu of an annuity, income-tax and super-tax on the sum so paid shall, except in the case of a person whose employment was carried on abroad, be deducted by the trustees at a rate equal to one-third of the rate of income-tax and super-tax at which the employee or the former employee would have been liable to income-tax and super-tax in respect of the previous year in which the payment is made, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct; and the provisions of sub-sections (4), (5), (6), (7), (8) and (9) of section 18 shall apply as if the sum to be deducted under this sub-section and sub-section (2) were income-tax payable under the head 'Salaries'."

**59. Insertion of new section 58W in Act XI of 1922.**—In Chapter IXB of the principal Act, after section 58V, the following section shall be inserted, namely:—

"58W. *Provisions relating to rules.*—(1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

(2) In addition to any power conferred by this Chapter, the Central Government may make rules—

(a) prescribing the statements and other information to be submitted with an application for approval;

(b) limiting the 'ordinary annual contribution' and any other contribution by an employer;

(c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund;

(d) determining the extent to, and the manner in, which exemption from payment of income-tax and super-tax may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn;

(e) providing for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Chapter and of the rules made thereunder; and

(f) generally, to carry out the purposes of this Chapter and to secure such further control over the approval of the superannuation funds and the administration of the approved superannuation funds as it may deem requisite."

**60. Amendment of section 59, Act XI of 1922.**—In sub-section (2) of section 59 of the principal Act, for clauses (c) and (d), the following clauses shall be substituted, namely:—

"(c) prescribe the procedure for giving effect to the terms of any agreement for the avoidance of double taxation on income which may be entered into by the Central Government under section 49AA;

(d) provide for the grant of rewards to persons giving definite information or assistance leading to the detection of any concealment or under-statement of income by an assessee, or to the recovery of any tax or penalty from him and the manner and circumstances in which rewards may be granted;"

**61. Insertion of new section 59A in Act XI of 1922.**—After section 59 of the principal Act, the following section shall be inserted, namely:—

"59A. *Power to tender immunity from prosecution, etc.*—(1) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the concealment of income or to the evasion of payment of tax on income, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (Act XLV of 1860) or under any other Central law for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made or from the imposition of any penalty.

(3) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn and any such person may be tried

for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable."

**62. Amendment of section 61, Act XI of 1922.**—In section 61 of the principal Act,—

(a) in sub-section (2),—

(i) for clause (ii), the following clause shall be substituted, namely:—

'(ii) "lawyer" means any person entitled to plead in any civil or criminal court in the taxable territories, and includes a solicitor who, before the 1st day of April, 1951, has attended before an income-tax authority or the Appellate Tribunal on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;';

(ii) for clauses (iii) and (iv), the following clauses shall be substituted, namely:—

'(iii) "accountant" means a chartered accountant as defined in the Chartered Accountants Act, 1949 (XXXVIII of 1949);

(iv) "income-tax practitioner" means a person who is for the time being enrolled in the Register of Income-tax Practitioners maintained by a Commissioner of Income-tax under sub-section (2B).';

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

"(2A) Any of the following persons shall, subject to the provisions contained in sub-section (3) and subject to any rules which the Central Board of Revenue may make in this behalf, be entitled on payment of such fee as may be prescribed to have his name entered in the Register of Income-tax Practitioners maintained by a Commissioner,—

(a) any person who before the 1st day of April, 1951, was entitled to act as an income-tax practitioner and has attended before an income-tax authority subordinate to that commissioner on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;

(b) any person who has acquired such educational qualifications and experience or has passed such examination as the Central Board of Revenue may prescribe for this purpose.

Provided that nothing contained in clause (a) or clause (b) shall be deemed to prohibit any person having the requisite qualifications prescribed therein from having his name entered in the registers maintained by more than one Commissioner on payment of a separate fee for each registration;

(2B) Each Commissioner of Income-tax shall maintain in the prescribed form a Register of Income-tax Practitioners, entitled to appear before an income-tax authority subordinate to him and may, at any time, remove from the register the name of any income-tax practitioner—

(a) who has not paid any prescribed fee required to be paid by him; or

(b) who is found at any time to be subject to any of the disqualifications mentioned in sub-section (3); or

(c) who has been found guilty of misconduct under the rules made by the Central Board of Revenue in this behalf; or

(d) whose name has been removed from the register maintained by any other Commissioner acting under clause (b) or clause (c).";

(e) in sub-section (3), for the words beginning with "No person who has been dismissed" and ending with the words "to represent an assessee under sub-section (1)", the following shall be substituted, namely:—

"(3) No person—

(a) who has been dismissed from the service of Government after the 1st day of April, 1938; or

(b) who has resigned from the service of Government before the completion of twenty-five years of service; or

(c) who was formerly in the service of such department of Government as may be prescribed, unless two years have elapsed since the date of his leaving the service; or

(d) who has been convicted of an offence connected with any income-tax proceedings or of any offence involving moral turpitude or on whom a penalty has been imposed under section 28, either in respect of his own assessment or for abetment of an offence in respect of the assessment of another person; or

(e) who has been in partnership with any other person for the exercise of a profession or vocation during which that other person has been convicted of an offence connected with an income-tax proceeding or a penalty for abetment has been imposed on that other person under section 28; or

(f) who has become an insolvent,

shall be qualified to represent an assessee under sub-section (1), and if any lawyer or chartered accountant is found guilty of misconduct by the authority empowered to take disciplinary action against a member of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that the lawyer, chartered accountant or the other person, as the case may be, shall be disqualified, either for all time or for such period as may be specified, to represent an assessee under sub-section (1):";

(d) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) In addition to any rules which may be made under sub-sections (2A) and (2B), the Central Board of Revenue may make rules—

- (a) regulating the conduct of income-tax practitioners;
- (b) prescribing the form of application for enrolment in the Register of Income-tax Practitioners, and the procedure for making such an application;
- (c) prescribing the amount of fee for each initial registration and for the annual renewal thereof and the time and mode of payment of such fee;
- (d) providing for the refund of fees where the application for enrolment is rejected.”

**63. Amendment of section 63, Act XI of 1922.**—In section 63 of the principal Act,—

(a) in sub-section (1), for the words “A notice” the words “Subject to any rules which the Central Board of Revenue may make in this behalf, a notice” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Any such notice or requisition may—

(i) in the case of an individual, be addressed to him by name or in the name, if any, in which he is carrying on business, or, in the case of a minor or a lunatic or an idiot, to his guardian or trustee or, in the case of a deceased individual, to his legal representative;

(ii) in the case of a Hindu undivided family, be addressed to it in the name, if any, in which the family is carrying on business or to the manager or any adult member of the family or to the guardian of any minor member of the family, or where the family has become dissolved to any adult person who was the manager or a member of the family at the time of dissolution or where the dissolution is caused by the death of any member to the legal representative of any such deceased member;

(iii) in the case of a company, be addressed to it in the name of the company or to a principal officer thereof or in the case of a company other than a company in which the public are substantially interested within the meaning of section 29A, to any person who was a shareholder of the company at any time during the relevant previous year;

(iv) in the case of a firm, be addressed to it in the name of the firm or to any member of the firm, or where the firm has been dissolved, to any person who was a member of the firm or to any person who is the legal representative of a deceased person who was a member of the firm at any time during the relevant previous year;

(v) in the case of any other association of persons, be addressed to it in the name by which the association is generally known, or to the principal officer thereof, or where the association has become dissolved to the person who was the principal officer or who was a member of the association at any time during the relevant previous year or to the legal representative of any such deceased member."

**64. Amendment of section 64, Act XI of 1922.**—In sub-section (1) of section 64 of the principal Act, after the words "is situate" the following words shall be inserted, namely:—

"and where the business, profession or vocation has been discontinued, by the Income-tax Officer of the area in which the place, or the principal place, at which the business, profession or vocation was carried on is situate."

**65. Substitution of new section for section 66 in Act XI of 1922.**—For section 66 of the principal Act, the following section shall be substituted, namely:—

*"66. Statement of case by Appellate Tribunal to High Court or to the Supreme Court.*—(1) Within sixty days of the date on which he is served with an order under sub-section (4) of section 38, the assessee or the Commissioner may present an application to the Appellate Tribunal in the prescribed form, accompanied, where the application is presented by the assessee by a fee of one hundred rupees in respect of each appeal disposed of by the order, requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and subject to the other provisions contained in this section the Appellate Tribunal shall within one hundred and eighty days of the receipt of such application draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period of sixty days hereinbefore specified, allow it to be presented within a further period not exceeding fifteen days.

(2) If on an application made under sub-section (1), the Appellate Tribunal—

(a) refuses to state a case on the ground that no question of law arises, or

(b) rejects it on the ground that it is time-barred,

the assessee or the Commissioner, as the case may be, may, in any case falling within clause (a) of this sub-section, within six months from the date on which he is served with the notice of refusal, and in any case falling within clause (b) of this sub-section, within two months from the date on which he is served with the notice of rejection, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and refer it to the High Court

and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly:

Provided that if in any case where it has been required by an assessee to state a case, the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application, and if he does so the fee paid by him under sub-section (1) shall be refunded.

(3) Section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application to the High Court under sub-section (2).

(4) If on an application made under sub-section (1), the Appellate Tribunal is of opinion that either on account of the importance of any question of law involved in the case or on account of a conflict in the decisions of different High Courts in respect of any particular question of law arising therefrom, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it direct to the Supreme Court.

(5) If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it under this section are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as it may direct in that behalf.

(6) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein and shall deliver its judgment thereon containing the ground on which such decision is founded, and a copy of the judgment shall be sent under the Seal of the Court and the signature of the Registrar, to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(7) The costs of any reference to the High Court or the Supreme Court shall be in the discretion of the Court.

(8) Notwithstanding that a reference has been made under this section to the High Court or the Supreme Court, income-tax shall be payable in accordance with the assessment made in the case.

(9) Where the amount of an assessment is reduced as a result of any reference to the High Court or the Supreme Court under this section, the amount overpaid shall be refunded with such interest as the Commissioner may allow, unless in the case of a reference to the High Court, the High Court, on an intimation given by the Commissioner within thirty days of the result of such reference that he intends to apply for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone the payment of such refund until the disposal of the appeal to the Supreme Court.

(10) For the purposes of this section, 'the High Court' means, if the place of assessment of the assessee is in the State of—

(a) Uttar Pradesh or Vindhya Pradesh,—  
the High Court at Allahabad;

(b) Bombay, Hyderabad, Madhya Bharat, Rajasthan, Saurashtra, Ajmer or Kutch,—  
the High Court at Bombay;

(c) Assam, West Bengal, Manipur, Tripura or the Andaman and Nicobar Islands,—

the High Court at Calcutta;

(d) Madras, Mysore, Travancore-Cochin or Coorg,—  
the High Court at Madras;

(e) Madhya Pradesh or Bhopal,—  
the High Court at Nagpur;

(f) Bihar or Orissa,—  
the High Court at Patna, and

(g) Punjab, Patiala and East Punjab States Union, Bilaspur, Delhi or Himachal Pradesh,—

the High Court of Punjab.”

**66. Amendment of section 66A, Act XI of 1922.**—In sub-section (1) of section 66A of the principal Act, for the words, brackets and figures “and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908 (V of 1908) shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force” the following shall be substituted, namely:—

“and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.”

**67. Amendment of section 67, Act XI of 1922.**—In section 67 of the principal Act, for the words “No suit shall be brought in any civil court to set aside or modify an assessment made under this Act” the following shall be substituted, namely:—

“No suit or other proceeding shall be brought in any civil court to set aside or modify an assessment made under this Act, and no suit or other proceeding shall lie for the grant of any relief by any court which will have the effect of preventing the commencement or continuance of any assessment proceedings against any person under this Act.”

**68. Amendment of section 67A, Act XI of 1922.**—In section 67A of the principal Act, for the words “and the time requisite” the words “and, where a copy of the order has not been served on the person concerned, the time requisite” shall be substituted.

**69. Amendment of section 67B, Act XI of 1922.**—In section 67B of the principal Act, for the words “as if the provision in force in the preceding year or the provision proposed in the Bill then before the Parliament, whichever is more favourable to the assessee”, the words “as if the provision proposed in the Bill then before Parliament” shall be substituted.



**70. Insertion of new section 67C in Act XI of 1922.**—After section 67B of the principal Act, the following section shall be inserted, namely:—

*“67C. Formal defects in proceedings not to invalidate assessments.*—(1) No assessment or other proceeding made or purporting to have been made in pursuance of this Act shall be deemed invalid merely on the ground of any error, omission, irregularity or other defect in the proceeding or in the form of any notice or order issued or made in connection therewith, if the error, omission, irregularity or other defect has not prevented a substantial compliance with this Act according to its true intent and purposes, and has not, in fact, occasioned a failure of justice.

(2) Without prejudice to the generality of sub-section (1) no assessment or demand made upon an assessee shall be deemed to be invalid merely on the ground of a mistake therein as to the name or surname of the person liable or the description of the status in which he is chargeable to tax or as to the description of any profits or property or year or years or to the amount of tax charged.”

**71. Amendment of the Schedule, Act XI of 1922.**—In the Schedule to the principal Act,—

(a) for the words “Superintendent of Insurance”, wherever they occur, the words “Controller of Insurance” shall be substituted;

(b) in rule 2,—

(i) in clause (b), for the words “actuarial valuation made for the last inter-valuation period” the words “actuarial valuation made in accordance with the Insurance Act, 1938 (IV of 1938), in respect of the last inter-valuation period” shall be substituted;

(ii) in clause (d) of the proviso, for the figures “12” the figures “15” shall be substituted;

(c) in clause (a) of rule 3, for the words “one-half” the words “two-thirds” shall be substituted, and in the second proviso for the words “one-half of such amount” the words and brackets “that proportion of such amount (one-half or two-third, as the case may be)” shall be substituted;

(d) for rule 8, the following rule shall be substituted, namely:—

“8. The profits and gains of the branches in the taxable territories of a person not resident in the taxable territories and carrying on any business of insurance, may, in the absence of more reliable data be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from the taxable territories bears to his total premium income.

For the purposes of this rule, the world income in relation to life insurance business of a person not resident in the taxable territories shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in the taxable territories.”

## STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to give effect to such recommendations of the Income-tax Investigation Commission as have been accepted by Government. In addition, the Bill includes—

(a) certain amendments which were originally included in the Taxation Laws Amendment Bill which was introduced in the Budget Session of 1949 but was withdrawn with a view to its provisions being included in a comprehensive Bill which was then-under contemplation;

(b) provisions for exempting foreign profits of non-residents when remitted to India within the first two years of their becoming resident in India, so as to enable such persons to bring in their savings to India without any tax liability;

(c) provisions for the granting of full relief up to the limit of the Indian tax in respect of foreign income-tax paid by residents of India on income which does not arise and cannot be deemed to arise in India—a provision which would encourage Indian Nationals to open branches in foreign countries without being subjected to double taxation;

(d) such other amendments as the experience of the working of the Act has indicated to be necessary or desirable. Some of these amendments give relief to assessee, while others are intended to facilitate collection of tax and to close up loop-holes of evasion.

2. The notes on clauses explain the object underlying each of the important amendments undertaken.

C. D. DESHMUKH.

NEW DELHI;

The 2nd June, 1951.

#### Notes on Clauses

[The references to Recommendations are to the Serial No. of the recommendations of the Income-tax Investigation Commission given in the Summary on pages 203 to 244 of the Report.]

Clause 2 amends the definitions in section 2. The important amendments are—

Sub-clause (c)(iii) implements recommendation No. 85. It seeks to check evasion of super-tax by shareholders of private companies by drawing the profits as loans instead of as dividends.

Sub-clause (d).—The definition of income has been redrafted for the sake of clarity. Sub-clause (iv) of the definition gives effect to recommendation No. 68. The premium received in connection with a lease will be treated as the income of the lessor where the period of lease does not exceed 50 years. The premium would be assessed proportionately over the period of the lease, but where the lease exceeds 20 years, the premium will be spread over 20 years, and assessed. Sub-clause (v) of the definition treats as income compensation received on the termination of a managing agency.

*Sub-clause (f)* implements recommendation No. 159 and is merely clarificatory.

*Sub-clause (h)* gives effect to recommendation No. 81 and will enable the Income-tax Officer to give credit for the tax on dividends to the person in whose total income the dividend is included.

*Clause 3* amends section 4 of the Income-tax Act.

*Sub-clause (a)(i)* implements the concession announced by Government in 1950 to exempt from tax foreign profits of non-residents which are brought into India within the first two years of their becoming residents of India. The omission of the original second proviso is consequential to the abolition of the category of persons 'not ordinarily resident'. See also clause 5 and recommendations Nos. 2 and 25.

*Sub-clause (a)(ii)* has the effect of bringing under charge all Government salaries irrespective of the place of payment.

*Sub-clause (a)(iii)* inserts an explanation which makes it clear that in the case of certain categories of transactions, where the primary source of income is in India, income actually accrues or arises in India.

*Sub-clause (b)(i)* implements recommendations Nos. 52—54 regarding religious and charitable trusts.

*Sub-clause (b)(ii)* is intended to check a form of evasion resorted to by employers and employees by describing a part of the remuneration as an allowance to meet expenses to be incurred in connection with the employment. The amendment limits the exemption to actual expenditure incurred by the employee, and brings the law into line with the law in U.K.

*Sub-clause (b)(iii)* clarifies that the income of private religious endowments is not exempt.

*Sub-clause (b)(iv)* inserts four new exemption clauses.

*Clause 4* implements recommendations Nos. 162 and 163 and is clarificatory in nature.

*Clause 5* gives effect to recommendations Nos. 2 and 25 and abolishes the category of 'not ordinarily resident' persons. [See notes under clause 3, sub-clause (a)(i).]

*Clause 6* statutorily recognises as income-tax authorities Directors of Inspection and Inspectors of Income-tax, who are already performing important functions in execution of the Act.

*Sub-clause (g)* implements recommendations Nos. 145—147, by according statutory recognition to the giving of advice and guidance to the Income-tax Officer in important cases by the Director of Inspection, Commissioner or the Inspecting Assistant Commissioner. It also gives these authorities the same powers which an Income-tax Officer has in relation to the making of an assessment.

*Clause 7* amends section 5A and removes the statutory bar to the appointment of an Accountant Member as President of the Tribunal, incidentally enhancing the qualifications of Members of the Tribunal.

*Clause 8.—Sub-clause (i)* amends section 7 relating to assessment of salaries. The amendment makes it clear that the word “perquisites” includes the value of any benefits in kind granted to an employee by the employer such as free meals, free domestic services and such other supplies and facilities. A number of business concerns have facilitated tax evasion by their higher paid employee. The cash salary of the employees, which was subjected to tax, was shown at a low figure and the employees were compensated by a number of amenities provided in “kind”. U.K. had to make a similar provision in their law to meet this evasion.

*Sub-clause (ii)* exempts the death-cum-retirement gratuity payable under the new pension rules, and also gives effect to recommendation No. 71 by withdrawing the exemption granted to payments made from an approved superannuation fund, in lieu or in commutation of an annuity, or on the employee leaving the employment, as the exemption of such payments has been used as a method of legal avoidance.

*Sub-clause (iii).*—This amendment is consequential to clause 8(a)(ii).

*Clause 9* amends section 8 which deals with income chargeable under the head “interest on securities”. The amendment places interest on debentures issued by a co-operative society on the same footing as interest on debentures issued by a company, as there is no difference between the two kinds of interest, either in regard to their character or as regards their chargeability.

*Sub-clause (ii).*—Interest on public loans issued outside India prior to 1st April, 1938 is admissible as a deduction in computing the income under this head. It is proposed to continue the concession by executive notification where similar or equivalent concessions are offered by the Government of another country as *quid pro quo*.

*Clause 10* amends section 9 which deals with income chargeable under the head “Property”.

The amendments are consequential to the amendments of section 14 and section 2(6C) of the Income-tax Act in pursuance of recommendations Nos. 21–23 (*see* notes to clause 15) and recommendation No. 68 [*see* notes to clause 2, sub-clause (d)] respectively. The amendment also clarifies that in computing the annual value of property occupied by the owner, the benefit of deduction of municipal taxes is to be given to the same extent as in the case of property let to a tenant.

*Clause 11.—Sub-clause (I)(i)* allows as a deduction in the payer's hands that portion of the premium which is assessable in the payee's hands [*see* recommendation No. 68 and notes to sub-clause (d) of clause 2].

*Sub-clause (I)(ii)(a).*—*See* notes under sub-clause (ii) of clause 9.

*Sub-clause (I)(ii)(b).*—It is found that assesseees (particularly private companies) sometimes use their own available capital in unbusiness-like activities and borrow money for the purposes of the business and claim the interest paid thereon as a deduction. The amendment seeks to disallow such interest.

*Sub-clause (I)(iii)* is intended to guard against possibility of such depreciation allowance being carried forward in the assessments of a

registered firm as has been set off against the income of the partners of the firm.

*Sub-clause (1)(iv)* implements recommendation No. 165 and provides for the allowance admissible under section 10(2)(vii) being given in the case of furniture as well.

An explanation has been added to section 10(2)(vii) to make it clear that a sale includes exchange and compulsory acquisition of property.

*Sub-clause (1)(v)* gives effect to recommendation No. 166 and clarifies that the Income-tax Officer may disallow that part of the bonus, etc., which is unreasonable or unjustified.

*Sub-clause (1)(vi)* gives effect to the second part of recommendation No. 166 and makes it clear that expenditure which would not be admissible under clauses (i) to (xiv) of sub-section (2) of section 10, would not be admissible under the omnibus clause (xv).

*Sub-clause (2)(ii)* gives effect to recommendation No. 19.

*Sub-clause (3)* provides for the computation of the written down value, where business assets are acquired by gift or inheritance. The explanation inserted by the clause will ensure that the depreciation allowance is computed only on the actual cost of the asset borne by the assessee.

*Sub-clause (4)* makes it clear that an incorporated association which is a separate entity from its members, is liable to tax on any receipts from its members.

*Sub-clause (5)* implements recommendation No. 41 and also provides against the same item of expenditure being allowed twice in computing the assessable income.

*Clause 12.—Sub-clause (i)—see notes under sub-clause (ii) of clause 9.*

*Sub-clause (ii)—see notes to clause 11, sub-clause (1)(i).*

*Sub-clause (iii)* implements recommendation No. 41.

*Clause 13* inserts a new section 12AA relating to the assessment of income from royalties or copyrights for literary or artistic work.

The section is intended to give some relief to authors, painters etc., in respect of their income from works on which they have spent more than 12 months or more than 24 months by providing for such income being spread over 2 years or 3 years respectively.

*Clause 14* implements recommendation No. 69 and also makes a similar provision regarding trading debts or losses recovered in subsequent years.

*Clause 15* gives effect to recommendations Nos. 21 and 22 and makes it clear that in the case of a member of a family, only that maintenance allowance is exempt which is out of the income of the family. It also makes an amendment necessitated by federal financial integration.

*Clause 16* restricts the exemption given in respect of life insurance premiums paid for securing a capital sum on death and also makes an amendment consequent to the amendment of section 7 of the Act (*see* clause 8).

*Clause 17* amends section 15C so as to allow the benefit of exemption to industrial undertakings which commence production before the 31st March, 1954. It also extends the exemption to smaller industries which employ 25 persons or more. The period of exemption has also been extended so that each undertaking which is entitled to exemption gets it for five assessment years.

*Clause 18* amends section 16 dealing with inclusions and exclusions in computing the total income.

*Sub-clause (a)(i)* gives effect to recommendation No. 168 in a modified form and provides for the income exempt from tax under sections 25(3) and 25(4) being taken into account for the purpose of computing the rate of income-tax payable.

*Sub-clause (a)(ii)* allows in computing the income of a partner, deduction of interest on the capital borrowed by him for investment in the firm and salary paid by him to an employee engaged to assist him in the business of the firm.

*Sub-clause (a)(iii)* seeks to close up a loophole of evasion by providing for the property settled and all the transactions connected therewith, being treated as the property or transactions of the settler.

*Sub-clause (c)* gives effect to recommendations Nos. 77 and 78 and also makes it clear that section 16(3) applies to the husband or the wife as the case may be.

*Clause 19* amends section 18 relating to deduction of tax at source.

*Sub-clauses (a) to (e), (g) and (h)* are consequential to the amendment of section 17(1) of the Income-tax Act by the Indian Finance Act, 1951.

*Sub-clause (c)* also relieves the hardship caused by requiring deduction of tax from the entire amount paid to a non-resident, when only a portion thereof may be liable to tax in the hands of the non-resident as "income".

*Sub-clause (f)* gives effect to recommendation No. 81 by adding a proviso to section 18(5) and also secures that credit for tax is given only where the tax has been credited to Government account.

*Sub-clause (i)* makes the private employer himself or in the case of a company or co-operative society, the company or society itself and its principal officers responsible for the deduction of tax and for any consequences of non-deduction. This is necessary to safeguard Government revenue.

*Clause 20.*—*Sub-clauses (a) and (b)* are consequential to the variation of the taxable minimum.

*Sub-clause (c)* enables the Income-tax Officer to call for a statement of assessee's current year's income and his accounts if he has reasons to believe that the tax which the assessee has been required to pay or has offered to pay is less than the tax which he ought to pay.

*Clause 21.*—A new section 20B is inserted in order to ensure the super tax payable on interest on securities and dividends is not evaded. If a person who draws the interest or dividend claims that he is drawing it on behalf of another person, he is required to disclose the particulars of the persons on whose behalf he is drawing the interest.

*Clause 22.*—The amendment made by this clause is consequential to the amendment of section 7 of the Income-tax Act [*see* notes to sub-clause (i) of clause 8].

*Clause 23* amends section 22 relating to the submission of return of total income and accounts.

*Sub-clauses (a) and (b)* implement recommendation No. 87.

*Sub-clause (c)* requires a person who has sustained a loss, which can be carried forward to subsequent years to make a return of that loss, within the period prescribed under section 22(1). It is necessary to ascertain the quantum of loss in the year in which it is incurred and not in a later year in which it can be set off, as by that time the evidence for proving the loss may not be available. This sub-clause also implements recommendation No. 95 by requiring that the return of income filed by an assessee liable to super-tax should be accompanied by audited statements.

*Sub-clause (d)* gives effect to a part of recommendation No. 93. It also empowers the Income-tax Officer to call for information which is in the possession of the assessee and which the Income-tax Officer considers material for the purposes of the assessment.

*Clause 24* amends section 23 relating to procedure for assessment.

*Sub-clause (b)* inserts a new sub-section to make it clear that the onus of proving the correctness of his return is on the assessee.

*Clause 25* amends section 23A dealing with the compulsory distribution of dividends in the case of private companies.

*Sub-clause (a)* gives effect to recommendations Nos. 30 to 33 and provides that in determining the amount available for distribution, there shall be deducted obligatory charges, which may not have been allowed in computing the assessable income of the company and amounts transferred to reserves by a Banking company under section 17 of the Banking Companies Act. Private investment trust companies would be required to distribute 100 per cent. of their profits. The sub-clause also brings the definition of a company, in which the public are substantially interested into line with that adopted in the Finance Acts since 1949. In a genuine public company more than 50 per cent. of the voting power must be with the public. Non-resident companies are not affected by this amendment, as section 23A is not applicable to them.

*Sub-clause (c)* gives effect to recommendation No. 85.

*Clause 26* amends section 24 relating to the set off of losses in computing the total income.

*Sub-clause (a)*, besides making a clarificatory amendment, inserts a new proviso, which secures that speculation losses would be set off against speculation profits only and not against any other income. This would check a tendency on the part of assessees to claim speculation losses but not to admit speculation profits.

*Sub-clause (b)(iii)* implements the principle underlying recommendation No. 7 regarding foreign losses of companies treated as resident. It also provides for the allocation of the loss carried forward from one year to another between the various businesses to which the loss pertains. This latter provision is, in essence, clarificatory.

*Sub-clause (c)* treats life insurance business and speculation business as distinct and separate businesses for the purposes of the Act and also defines a speculative transaction.

*Clause 27* makes a clarificatory amendment giving effect to recommendation No. 12.

*Clause 28* amends section 25 of the Act.

*Sub-clause (d)* provides for the benefit of sub-sections (3) and (4) of section 25 of the Act being given only to a person who has given notice of the discontinuance or succession within one year thereof.

The other sub-clauses are merely clarificatory in nature.

*Clause 29* gives effect to recommendation No. 85 [see also clause 25(c)] by inserting a new section 25B dealing with the liability of liquidators. The clause safeguards the interests of revenue by requiring the liquidator to pay the amount notified by the Income-tax Officer as the tax payable presently or in future by the company.

*Clause 30* enables the registration already granted to a firm being cancelled if it is found that the particulars furnished in the application for registration are incorrect. It also enables the assessment in such cases being made on the basis of an unregistered firm subject to the provisions of sections 33B and 34.

*Clause 31* deletes section 27 of the Act as it serves no useful purpose since an appeal has already been provided against an *ex-parte* assessment and the assessee can obtain all the relief he requires including the setting aside of the assessment, in that appeal.

*Clause 32* amends section 28 relating to imposition of penalties and gives effect to recommendations Nos. 103 to 114 and 116. The clause recognises the degree of delinquency involved in the various defaults and concealments by providing a different penalty for different types of default or concealment. The clause further provides for the imposition of a penalty on a person, who abets the commission of any default or concealment. The clause also enables the publication of the names and the particulars of persons on whom a penalty is imposed.

*Clause 33* amends section 30 relating to appeals.

*Sub-clause (a)* redrafts sub-section (1) for the sake of clarity. The sub-section as re-drafted—

(i) gives effect to recommendation No. 123 by providing an appeal against the Income-tax Officer's order under section 35;

(ii) implements recommendation No. 127 and extends the principle underlying this recommendation to appeals by residents;

(iii) secures that an appeal against an order passed by an Inspecting Assistant Commissioner, when exercising the powers of an Income-tax Officer does not lie to the Appellate Assistant Commissioner. (Provision has been made elsewhere for a direct appeal to the Tribunal); and



(iv) provides for concurrence of all the partners of a firm as a condition precedent to an appeal preferred by an individual partner against the quantum of the firm's income or the allocation thereof between the partners.

*Sub-clause (b)* makes only a consequential amendment.

*Clause 34.*—*Sub-clause (a)* adds a condition precedent to the admission of additional grounds of appeal.

*Sub-clause (b)* gives effect to recommendation No. 129 and incorporates the principle regarding admission of fresh evidence contained in rules 27 and 28 of Order XLI of the Code of Civil Procedure.

*Sub-clause (c)* makes a clarificatory redraft.

*Sub-clause (d)* requires the Appellate Assistant Commissioner to state in his order precisely the relief granted and its effect on the assessment or on the orders appealed against (*cf.* rule 35 of Order XLI, Code of Civil Procedure).

*Clause 35.*—*Sub-clause (a)* provides for an appeal to the Appellate Tribunal against an order under section 26 passed by the Inspecting Assistant Commissioner or the Commissioner and against an order of assessment passed by an Inspecting Assistant Commissioner exercising the powers of an Income-tax Officer [*see* notes to clause 33, sub-clause (a)].

*Sub-clause (c)* gives effect to recommendation No. 156 regarding filing of cross objections.

*Sub-clause (d).*—The power to condone delay in the case of appeals against orders passed by an Inspecting Assistant Commissioner, exercising the powers of an Income-tax Officer is excluded.

*Sub-clause (e)* secures that the Tribunal will serve a copy of its order on the parties and that the provisions of section 31 regarding the admission of fresh evidence, manner of disposal of appeals and clear specification of the relief granted, will apply to the orders passed by the Tribunal.

*Clause 36* makes it clear that the time limit for completion of assessments would not apply to an assessment or re-assessment found necessary in consequence of an appellate, revision or High Court or Supreme Court order.

*Clause 37* secures that changes necessary in the assessments of partners consequent on the relief given to a firm on appeal, reference or revision, or changes necessary in the assessment of a person liable to excess profits tax or business profits tax consequent on the modification of such assessments, can be made under section 85.

*Clause 38.*—Section 37 of the Act is amended—

(i) to give power to all Income-tax Authorities (including Inspectors) to take evidence on oath etc.,

(ii) to permit all the powers given by this section being exercised for all the purposes of the Act and not merely in connection with a particular assessment,

(iii) to enable the Income-tax authorities to impound books of account produced before them, and

(iv) to give power to the income-tax authorities and the Tribunal to deal with cases of "contempt" under the relevant provisions of the Criminal Procedure Code.

The clause also implements recommendations Nos. 93 and 141 and gives powers of search and seizure to income-tax authorities on the lines of section 6(9) of the Taxation on Income (Investigation Commission) Act, 1947.

*Clause 39* gives effect to recommendation No. 56 and the latter part of recommendation No. 82. The clause also provides for certain kinds of information being called for and for proper verification of statements furnished under this section.

*Clause 40.—Sub-clause (i)* provides for the assessment of the income of a private religious trust or endowment in the hands of the manager or *shebait* and is clarificatory. [*See notes to clause 3(b)(iv).*]

*Sub-clause (ii)* redrafts the first proviso to section 41 to make it clear that the maximum rate of income-tax is applicable to income receivable on behalf of an artificial or juridical person such as a deity, and to income which is not specifically receivable on behalf of any individual, that is, income applied to the maintenance of buildings, monuments, etc.

*Clause 41* amends section 42 dealing with income deemed to accrue or arise in India.

*Sub-clause (a)* makes a few changes consequential to the amendment of section 4 by clause 3(a)(iii) and also gives effect to a part of recommendation No. 6 by clarifying that the agent is the statutory agent appointed under section 43 and that all the chargeable income of the non-resident can be assessed in his hands.

*Sub-clause (b)* gives effect to another part of recommendation No. 6 and empowers the Income-tax Officer to freeze, in advance of assessment, the assets of the non-resident in the hands of persons other than the statutory agent.

*Sub-clause (c)* redrafts sub-section (2) and omits reference to the category of "not ordinarily resident" persons. [*See notes to clause 3(a)(i) and clause 5.*]

*Sub-clause (d)* will enable the Central Board of Revenue to prescribe by rules the proportion of profits that will be deemed to accrue or arise in India according to the extent of operations carried out in India. The non-resident can thus readily ascertain the extent of his liability to tax.

*Clause 42* gives effect to the principle of recommendation No. 28 and enables the tax due from any company being realised from its subsidiaries. In the case of a privately controlled company, provision has been made to realise the tax from its shareholders as well.

*Clause 43* redrafts Chapter V-A so as to extend the procedure for assessment of profits and recovery of tax laid down in that Chapter with respect to tramp steamers, to aircraft operated by non-resident air transport concerns which have no regular offices or agencies in India. At

present the tax due on the earnings of such aircraft is escaping tax. The assessment in the case of aircraft will be made by Customs officers instead of by Income-tax Officers as in the case of tramp steamers. The profits will be assumed provisionally to be 1/16th of the fare and freight earned by the aircraft, but the person concerned can claim that a regular assessment may be made on him in any assessment year, in which case necessary adjustments will be made.

*Clause 44* makes certain amendments in section 44-D which are consequential to the abolition of the category of "not ordinarily resident" persons. [See notes to clause 3(a)(i) and clause 5.]

*Clause 45.*—The Income-tax Investigation Commission found that influential persons held a large number of shares in several companies in fictitious names. While thus in virtual possession of the shares they are enabled to conceal their income and do not pay any tax on the income from the shares. A similar evasion is also practised by making deposits and loans in the names of fictitious persons. The proposed new section 44G will provide for the transfer of the shares, debentures, deposits, etc. to the Government, only after the taking of adequate steps in the matter, it is not possible to discover the true owner. Necessary safeguards are provided to enable the true owner to establish his claim, including safeguards by way of appeal, reference to a High Court, etc.

*Clause 46* inserts a new section 45-A providing (in pursuance of a separate recommendation of the Commission *re. benami* transactions) for the recovery of tax from the ostensible or legal owner of assets, where the income from those assets or from dealings in those assets is included in the income of any person other than the ostensible owner. The liability of the legal owner is, of course, limited to the tax on the income from such assets. Notice of the assessment to the ostensible owner is a condition precedent to the recovery of tax from the assets.

*Clause 47* amends section 46 relating to the mode and time of recovery of tax.

*Sub-clause (a)* enables the Income-tax Officer to publish the names and addresses of persons on whom penalties have been imposed for non-payment of tax.

*Sub-clause (b)* inserts a new sub-section (1B) enabling the tax assessed on a person and remaining unpaid being recovered from his legal representative, but the liability of the legal representative will be limited to the assets of the deceased in his hands.

*Sub-clause (c)* redrafts sub-section (5A) to enable the Income-tax Officer to investigate any objection raised to the attachment of a debt. The decision of the Income-tax Officer would be open to challenge in a court, but until the attachment is raised or modified either by the Income-tax Officer or by the court, it will remain effective.

*Sub-clause (d)* inserts a new sub-section (5B) empowering the Income-tax Officer to attach by a notice the assets of a defaulting assessee where the assets are placed for safe custody in the hands of another person, for example, a banking company.

*Sub-clause (e)* clarifies that the limitation of one year prescribed by sub-section (7) does not apply to the commencement of each mode of recovery prescribed by this section but only to the action taken in the first instance.

*Clause 48* inserts a new section 48A which requires any person, who is not domiciled in India, or who, even if domiciled in India, has, in the opinion of an Income-tax authority, no intention of returning to India, to obtain a tax clearance certificate before leaving India. The provision is intended primarily to safeguard the interests of revenue. The Income-tax enactments of America, Australia, Ceylon, Pakistan and Iran contain similar provisions.

*Clause 49* implements the concession announced by the Government of India in 1950, by amending section 49D, which deals with relief in respect of tax charged in a country with which there are no reciprocal arrangements for double taxation relief or any agreement for avoidance of double taxation. Under the amended section full credit (as opposed to credit for half the tax given under the present law) will be given for the foreign tax, upto the limit of the Indian tax, in respect of income doubly taxed, which does not arise and cannot be deemed to arise in India. Power is being taken to apply this relief, by notification, retrospectively to income arising in the United Kingdom, if the negotiations with that country for double taxation avoidance do not reach any satisfactory conclusion.

*Clause 50* amends section 49E and enables the Income-tax Officer to set off the refund due to an assessee against any interest or penalty due by the assessee.

*Clause 51* redrafts section 51. Clause (d) of the new section 51 implements recommendation No. 88 by making the wilful failure to make a voluntary return by persons whose income exceeds the taxable minimum by two thousand rupees punishable under this section. Clause (f) is consequential to clause 29. This section also provides for the imposition of a sentence of imprisonment in addition to fine.

*Clause 52* redrafts section 52 and prescribes more deterrent punishment for a false verification in the returns and statements required to be furnished under the Act.

*Clause 53* inserts a new section 52A providing for the punishment of abetment of offences under sections 51 or 52.

*Clause 54* amends section 53 of the Act relating to prosecution and provides for prosecution being launched at the instance of the Appellate Tribunal or an Income-tax authority not below the rank of an Assistant Commissioner. The clause also provides that the offence cannot be compounded after the prosecution has been instituted.

*Clause 55* amends section 54 to give effect to recommendations Nos. 117 to 119. The amended section 54 permits the disclosure of information in an assessee's record where it is necessary to do so either to verify the correctness of the assessee's statement or to enable proper legal or other proceedings being taken against him or any other person in certain cases.

The clause also implements recommendations Nos. 114 and 192 by permitting the disclosure of the particulars of persons, who have been penalized under the Act or have been guilty of evasion of tax, to the public and to other Government Departments. The disclosure to other Government Departments is with a view to prevent Government patronage being conferred on them.

*Clause 56* gives effect to recommendation No. 75 by amending section 58C. The amended section 58C relaxes the conditions for recognition of provident funds and permits such funds to retain the accumulated balance due to an employee till it is actually required by the employee.

*Clause 57* gives effect to recommendations Nos. 70 and 71 by amending section 58P and gives power to the Central Government to prescribe by rules the conditions to be fulfilled by recognised superannuation funds. A similar power exists in regard to recognised provident funds. The clause also inserts a new sub-section under which any rules of a recognised fund, which are repugnant to the provisions of the Act, will be of no effect.

*Clause 58.—Sub-clause (a)* gives effect to recommendation No. 71 by amending section 58S. The amended section makes the contributions to a recognised superannuation fund liable to tax when they are paid out to the employee.

*Sub-clause (b)* adds a new sub-section providing for deduction of tax from the lump sum paid to an employee in commutation of an annuity at a reduced rate.

*Clause 59* gives effect to recommendations Nos. 70 and 72 and inserts a new section 58W which corresponds to section 58L of the Act pertaining to provident funds and empowers the Central Government to make rules.

*Clause 60* amends section 59 of the Act.

*Sub-clause (i)* is consequential to the deletion of section 49 from the Act and the insertion of section 49AA.

*Sub-clause (ii)* inserts a new clause, which enables the Central Board of Revenue to make rules in respect of the grant of rewards to informers. The Income-tax Investigation Commission has, subsequent to the making of their report, recommended that the system of grant of rewards to informers may be tried, as it has been found successful in other countries.

*Clause 61* inserts a new section 59A empowering the Central Government to tender immunity from prosecution to accomplices who are prepared to give evidence against an assessee. The new section corresponds to sections 6A and 6B of the Taxation on Income (Investigation Commission) Act, 1947.

*Clause 62* amends section 61 relating to appearance by an authorised representative before Income-tax authorities, and the Appellate Tribunal. The amended section gives effect to recommendation No. 115 by providing for all income-tax practitioners being enrolled on registers maintained by Commissioners of Income-tax and by requiring them to conform to a code of conduct and discipline to be prescribed by rules made by the Central Board of Revenue.

*Sub-clause (a)(i)* amends the definition of 'lawyer' to exclude persons who are not entitled to appear in a civil or a criminal court.

*Sub-clause (d)* redrafts sub-section (3) for the sake of clarity and also disentitles certain categories of persons from appearing before Income-tax authorities.

*Clause 63* amends section 63 relating to service of notices.

*Sub-clause (a)* provides for rules being made by the Central Board of Revenue in regard to service of notices. The intention is to adapt the modes of service prescribed by the Code of Civil Procedure to suit the requirements of the Income-tax Act.

*Sub-clause (b)* redrafts sub-section (2) and specifies clearly the individual to whom notices under the Act may be addressed. The sub-clause also gives effect to recommendation No. 169 in regard to service of notices in the case of a disrupted Hindu undivided family.

*Clause 64* amends section 64 to make it clear that in the case of a discontinued business, profession or vocation, assessment may be made by the Income-tax Officer in whose jurisdiction the principal place of business was situate.

*Clause 65* amends and redrafts section 66 of the Act relating to references to a High Court in regard to questions of law arising out of the order of the Tribunal. The amended section 66 makes the following changes in the existing law:—

(1) A separate fee of Rs. 100 is to be paid in respect of each appeal notwithstanding that a common order has been passed by the Tribunal in respect of several appeals.

(2) The reference to the High Court should be made by the Tribunal within 180 days of the receipt of the application by the Tribunal (recommendation No. 157 in a modified form).

(3) The Appellate Tribunal is given the power to condone the delay in the presentation of an application upto a limit of 15 days (recommendation No. 158 in a modified form).

(4) The Appellate Tribunal is empowered to make a direct reference to the Supreme Court where the question of law is important or where there is a conflict between two High Courts in regard to the question of law sought to be referred (recommendation No. 153).

(5) The jurisdiction in income-tax matters is confined to the seven old High Courts.

*Clause 66* amends section 66A to secure that whenever the Judges hearing a reference are equally divided on a question it should be referred to one or more Judges and decided according to the decision of a majority of all the Judges who have heard the reference.

*Clause 67* amends section 67 of the Act to provide that suits or other proceedings in any court are barred even where the suit or proceeding is to prevent the commencement or progress of any assessment under the

Act. The amendment is necessitated by certain observations of the Supreme Court in the case of the *State of Tripura vs. the Province of East Bengal*, 1951, *Income-tax Reports*, page 132.

*Clause 68* amends section 67A and secures that the time requisite for obtaining a copy of the order is to be taken into account in computing the limitation only where a copy of the order is not served on the assessee under the provisions of the Act.

*Clause 69* amends section 67B and provides for the provisional collection of income-tax on the basis of the rates prescribed by the Finance Bill. It would be administratively inconvenient if provisional assessments to income-tax have to be made by making laborious alternative calculations.

*Clause 70* inserts a new section 67C, which provides that formal mistakes do not result in the whole assessment or proceedings being quashed on that ground alone.

*Clause 71* amends the Schedule to the Act containing the rules for the computation of the profits and gains of insurance business.

*Sub-clause (b)(i)* clarifies that the valuation which is to form the basis of the computation is the valuation which is required to be furnished to the Controller of Insurance under the Insurance Act.

*Sub-clause (b)(ii)* implements recommendation No. 46 and permits an increased allowance on account of management expenses—15 per cent. of renewal premiums against 12 per cent. at present allowed.

*Sub-clause (c)* implements recommendation No. 44 to the extent practicable by providing for a deduction of two-thirds of the bonus paid to policy-holders as against half the bonus at present deducted.

*Sub-clause (d)* is, in essence, clarificatory. It provides for the applicability of rule 8 to all non-residents carrying on insurance business (not merely to companies as at present) and to both the methods of computation mentioned in rule 2.

#### BILL No. 57 OF 1951

**A Bill to provide for the control of rents and evictions, and for the lease of vacant premises to Government, in certain areas in the States of Delhi and Ajmer.**

BE it enacted by Parliament as follows:—

#### CHAPTER I

#### PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Act may be called the Delhi and Ajmer Rent Control Act, 1951.

(2) It extends to the areas specified in the First Schedule and may be extended by the Central Government, by notification in the Official Gazette, to such other areas in the State of Delhi or Ajmer as may, from time to time, be specified in the notification:

Provided that the Central Government may, at any time, by a like notification direct that it shall cease to be in force in any such area, and with effect from such date, as may be specified in the notification.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) “fair rate” means the fair rate fixed under section 24 and includes the rate as revised under section 25;

(b) “hotel or lodging house” means a building or part of a building where lodging with or without board or other services is provided for a monetary consideration;

(c) “landlord” means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant;

(d) “lawful increase” means an increase in rent permitted under the provisions of this Act;

(e) “manager of a hotel” includes any person in charge of the management of the hotel;

(f) “owner of a lodging house” means a person who receives or is entitled to receive whether on his own account or on behalf of himself and others or as an agent or a trustee for any other person, any monetary consideration from any person on account of board, lodging or other services;

(g) “premises” means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes—

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building;

(ii) any furniture supplied by the landlord for use in such building or part of a building;

but does not include a room in a dharamshala, hotel or lodging house;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “standard rent”, in relation to any premises, means,—

(i) where the standard rent has been fixed by the court under section 8, the rent so fixed; or

(ii) where the standard rent has not been fixed under section 8, the standard rent of the premises as determined in accordance with the provisions of the Second Schedule;

(j) “tenant” means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under a tenant before the commencement of this Act.

**3. Act not to apply to certain premises.**—Nothing in this Act shall apply—

(a) to any premises belonging to the Government; or



(b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government.

## CHAPTER II

### STANDARD RENT AND PROVISIONS RELATING TO OTHER CHARGES BY THE LANDLORD.

**4. Rent in excess of standard rent not recoverable.**—(1) Except where rent is liable to periodical increase by virtue of an agreement entered into before the 1st day of January, 1939 or where rent is payable under a lease entered into before the 1st day of January, 1939, which has not expired before the first day of the period for which the rent is claimed, no tenant shall, notwithstanding any agreement to the contrary, be liable to pay to his landlord for the occupation of any premises any amount in excess of the standard rent of those premises unless such amount is a lawful increase of the standard rent in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (1), any agreement for the payment of rent in excess of the standard rent shall be null and void and shall be construed as if it were an agreement for the payment of the standard rent only.

**5. Unlawful charges not to be claimed or received.**—(1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.

(2) No person shall, in consideration of the grant, continuance or renewal of a tenancy or sub-tenancy of any premises, claim or receive the payment of any premium, *pugree*, *finic*, advance or any other like sum in addition to the rent.

*Explanation.*—Receipt of rent in advance for a period not exceeding one month shall not be deemed to be an advance within the meaning of this section.

(3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment of his tenancy or sub-tenancy, as the case may be, of any premises.

(4) Nothing in this section shall apply to any payment made in pursuance of an agreement entered into before the 1st day of November, 1939.

**6. Lawful increases of standard rent.**—(1) Where a landlord has at any time, whether before or after the commencement of this Act, incurred expenditure for any improvement, addition or structural alteration in the premises, not being expenditure on decoration or tenantable repairs necessary or usual for such premises, and the cost of that improvement, addition or alteration has not been taken into account in determining the standard rent of the premises, the landlord may lawfully increase the standard rent per year—

(i) in the case of any such improvement, addition or alteration having been made before the commencement of this Act, by an amount not exceeding seven and a half per cent. of such cost; or

(ii) in the case of any such improvement, addition or alteration being made after the commencement of this Act, by an amount not exceeding nine per cent. of such cost.

(2) Where a landlord pays in respect of the premises any charge for electricity or water consumed in the premises or any other charge levied by a local authority having jurisdiction in the area which is ordinarily payable by the tenant, he may recover from the tenant any amount so paid by him; but no landlord shall recover from the tenant whether by means of an increase in rent or otherwise the amount of any tax on building or land imposed in respect of the premises occupied by the tenant:

Provided that nothing in this sub-section shall affect the liability of any tenant under an agreement, express or implied, to pay from time to time the amount of any such tax as aforesaid.

(3) Where a part of the premises let for use to a tenant has been sub-let by him—

(a) the landlord may lawfully increase the rent payable by the tenant—

(i) in the case of any premises let for residential purposes, by an amount not exceeding twelve and one-half per cent. of the standard rent of the part sub-let;

(ii) in the case of any premises let for other purposes, by an amount not exceeding twenty-five per cent. of the standard rent of the part sub-let;

(b) the tenant may lawfully increase the rent payable by the sub-tenant—

(i) in the case of any premises let for residential purposes, by an amount not exceeding twenty-five per cent. of the standard rent of the part sub-let; and

(ii) in the case of any premises let for other purposes, by an amount not exceeding fifty per cent. of the standard rent of the part sub-let;

(c) the tenant shall, on being so requested in writing by the landlord, supply, within fourteen days of such request being made, a statement in writing giving full particulars of any sub-letting including the rent charged.

**7. Notice of increase of, or addition to, rent.**—(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the end of the month in which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882).

(3) For the avoidance of doubt, it is hereby declared that the provisions of this section apply equally to any increase in rent payable by the sub-tenant.

**8. Cases in which standard rent may be fixed by court.**—(1) In any of the following cases, namely,—

(a) where, for any reason whatsoever, any dispute arises between a landlord and the tenant regarding the amount of standard rent payable in respect of any premises in accordance with the provisions of the Second Schedule; or

(b) where, at any time on or after the 2nd day of June, 1944, any premises are first let and the rent at which they are let is, in the opinion of the court, unreasonable;

the court may, on an application made to it for the purpose or of its own motion or in any suit or proceeding, fix the standard rent at such an amount as, having regard to the provisions of this Act and the circumstances of the case, the court deems just.

(2) Where there is any dispute between the landlord and the tenant regarding the amount which is a lawful increase of the standard rent, the court may determine such amount.

(3) Where for any reason it is not possible to determine the standard rent of any premises on the principles set forth in the Second Schedule, the court may, on an application made to it for the purpose or of its own motion, determine the standard rent, and in so doing shall have regard to the standard rents of similar premises in the same locality and other circumstances of the case.

(4) In fixing the standard rent under clause (b) of sub-section (1), the court shall fix an amount which appears to it to be reasonable and no standard rent so fixed shall—

(i) in the case of any premises the construction of which was completed before the commencement of this Act, exceed seven and one-half per cent. of the reasonable cost of such construction;

(ii) in the case of any premises the construction of which is completed after the commencement of this Act, exceed nine per cent. of the reasonable cost of such construction.

*Explanation.*—For the purposes of this sub-section, the “cost of construction”, in respect of any premises, includes the value of the land comprised in such premises.

(5) The standard rent shall in all cases be fixed as for a tenancy of twelve months:

Provided that where any premises are let or re-let for a period of less than twelve months, the standard rent for such tenancy shall bear the same proportion to the annual standard rent as the period of tenancy bears to twelve months.

(6) Where the court determines the standard rent of any premises under this section, the court shall determine the standard rent of the premises in an unfurnished state, and may also determine an additional charge to be payable on account of any fittings or furniture supplied by the landlord and it shall be lawful for the landlord to recover such additional charge from the tenant.

(7) In every case in which the court determines the standard rent of any premises under this section, it shall appoint a date from which the standard rent so determined shall be deemed to have effect.

**9. Fixation of interim rent by the court.**—If an application for fixing the standard rent or for determining the lawful increase of such rent is made under section 8, the court shall, as expeditiously as possible, make an order specifying the amount of the rent or the lawful increase to be paid by the tenant to the landlord pending the final decision of the application and shall appoint a date from which the rent or lawful increase so specified shall be deemed to have effect.

**10. Limitation of liability of middleman.**—No collector of rents or middleman shall be liable to pay to his principal, in respect of any premises, any sum by way of rental charges which exceeds the amount which he is entitled under this Act to realise from the tenant or tenants of the premises.

**11. Limitation for applications for fixation of standard rent.**—Any landlord or tenant may file an application to the court for fixing the standard rent of the premises or for determining the lawful increase of such rent—

(a) in the case of any premises let before the commencement of this Act, within six months from such commencement;

(b) in the case of any premises let after the commencement of this Act, within six months from the date on which it is so let; and

(c) in any other case, within six months from the date on which the cause of action arose:

Provided that the court may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

**12. Refund of rent, premium, etc., not recoverable under this Act.**—Where any amount has been paid by any person whether before or after the commencement of this Act,—

(a) on account of rent, being an amount which is by reason of the provisions of this Act, not recoverable, or

(b) as premium, *pugree*, fine, advance or other like sum in addition to the rent, the receiving of which is prohibited under this Act,

the amount shall be recoverable by him from the landlord to whom it was paid or on whose behalf it was received at any time within six months from the date of the payment and may, if such person is a tenant, without prejudice to any other mode of recovery, be deducted by him from any rent payable by him to such landlord.

### CHAPTER III

#### CONTROL OF EVICTION OF TENANTS

**13. Protection of a tenant against eviction.**—(1) Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):

Provided that nothing in this sub-section shall apply to any decree or order for such recovery of possession if the court is satisfied—

(a) that the tenant has neither paid nor tendered the whole of the arrears of rent due within one month of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882); or

(b) that the tenant without obtaining the consent of the landlord in writing has, after the commencement of this Act, sub-let, assigned or otherwise parted with the possession of, the whole or any part of the premises; or

(c) that the tenant without obtaining the consent of the landlord in writing has, whether before or after the commencement of this Act, used the premises for a purpose other than that for which they were let; or

(d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the institution of any suit or proceeding for recovery of possession; or

(e) that the premises let for residential purposes are required *bona fide* by the landlord who is the owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation.

*Explanation.*—For the purposes of this clause, “residential premises” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes; or

(f) that the premises have become unsafe or unfit for human habitation and are *bona fide* required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(g) that the tenant has, after the commencement of this Act, built, acquired vacant possession of, or been allotted, a suitable residence; or

(h) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment; or

(i) that the tenant has been guilty of conduct which is a nuisance or which causes annoyance to the occupiers of the neighbouring premises or other occupiers of the same premises; or

(j) that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises, or notwithstanding previous notice has used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Improvement Trust while giving him a lease of the land on which the premises are situated; or

(k) that the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Improvement Trust in pursuance of any improvement scheme or development scheme.

(2) No decree or order for recovery of possession shall be passed on the ground specified in clause (a) of the proviso to sub-section (1), if, on the first day of the hearing of the suit or within such further time as may be allowed by the court, the tenant pays in court the arrears of rent then due together with the costs of the suit.

(3) For the purposes of clause (b) of the proviso to sub-section (1), a court may presume that the premises let for use as a residence were or are sub-let by a tenant in whole or in part to another person, if it is satisfied that such person not being a servant of the tenant or a member of the family of such servant was or has been residing in the premises or any part thereof for a period exceeding one month otherwise than in commensality with the tenant.

(4) No decree or order for recovery of possession shall be passed on the grounds specified in clause (e) or clause (j) of the proviso to sub-section (1), unless the court is satisfied that it is reasonable to do so:

Provided that where such a decree is passed on the grounds specified in the aforesaid clause (e), the landlord shall not be entitled to obtain possession of the premises by an order of the court before the expiration of a period of three months from the date of the decree.

(5) If the tenant contests the suit as regards the claim for ejectment, the plaintiff-landlord may make an application at any stage of the suit for an order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any, and the court after giving an opportunity to the parties to be heard may make an order for deposit of rent at such rate month by month and the arrears of rent, if any, as it thinks fit and on the failure of the tenant to deposit the arrears of rent within fifteen days of the date of the order or to deposit the rent at such rate for any month by the 15th of the next following month, the court shall order the defence against ejectment to be struck out and the tenant to be placed in the same position as if he had not defaulted the claim to ejectment; and the landlord may withdraw the amount of money in deposit without prejudice to his claim to any decree or order for recovery of possession of the premises.

**14. Recovery of possession for occupation, and re-entry.**—Where a landlord recovers possession of any premises from the tenant by virtue of any decree or order made on the grounds specified in clause (e) of the proviso to sub-section (1) of section 13 and the premises are not occupied by the landlord as a residence for himself or his family within two months of obtaining such possession or the premises having been so occupied, are, at any time within eight months of such occupation, re-let in whole or in part to any person other than the evicted tenant, the court may, on the application of such evicted tenant, place him in vacant possession of the premises and award such damages to him as it thinks fit against the landlord.

**15. Recovery of possession for repairs and re-entry.**—(1) The court shall when passing any decree or order on the grounds specified in clause (f) of the proviso to sub-section (1) of section 13, ascertain from the

tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the decree or order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

(2) If the tenant delivers possession on or before the date specified in the decree or order, the landlord shall, on the completion of the work of repairs, place the tenant in occupation of the premises or part thereof on the original terms and conditions.

(3) If, after the tenant has delivered possession on or before the date specified in the decree or order, the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work in a reasonable time or having completed the work, fails to place the tenant in occupation of the premises in accordance with sub-section (2), the court may, on the application of the tenant made within one year from the specified date, order the landlord to place the tenant in occupation of the premises or part thereof on the original terms and conditions and on such an order being made, the landlord and every other person who may be in occupation shall give vacant possession to the tenant of the premises or part thereof.

#### **16. Recovery of possession in cases of tenancies for limited period.—**

Where a landlord does not require the whole or any part of any premises for a particular period and he lets the premises or part thereof as a residence for such period as may be agreed to in writing between himself and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, the court may, on an application of such landlord, place him in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.

#### **17. Special provision for recovery of possession in certain cases.—**

Where the landlord in respect of any premises is any company or other body corporate or any local authority, educational institution, hospital or charitable dispensary, and the premises are intended solely for the use of the employees of such landlord, then, notwithstanding anything contained in section 13, the court may, on an application of such landlord, place him in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the court is satisfied—

(a) that the tenant, to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or

(b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or

(c) that any person is in unauthorised occupation of such premises.

**18. Permission to construct additional structures.—**Where the landlord proposes to make any improvement in, or construct any additional structure on, any building which has been let to a tenant and the tenant refuses to allow the landlord to make such improvement or construct such additional structure, the landlord may apply to the court and the court may, if it is satisfied that the landlord is ready and willing to commence

the work and that such work will not cause any undue hardship to the tenant, permit the landlord to do such work and may make such other orders as it thinks fit in the circumstances of the case.

**19. Special provision regarding vacant building sites.**—(1) The provisions of this section shall apply notwithstanding anything contained in section 18, but only in relation to premises in such areas as the Central Government may, from time to time specify by notification in the Official Gazette,

(2) Where any premises which have been let comprise vacant grounds upon which it is permissible under the building regulations or other municipal bye-laws for the time being in force to erect any building, whether for use as a residence or any other purpose and the landlord proposing to erect such building is unable to obtain possession of these grounds from the tenant by agreement with him, the landlord may apply to the court, and the court may, if it is satisfied that the landlord is ready and willing to commence the work and that the severance of the vacant grounds from the rest of the premises will not cause undue hardship to the tenant,—

(a) direct such severance,

(b) place the landlord in possession of the vacant grounds,

(c) determine the rent payable by the tenant thereafter in respect of the rest of the premises, and

(d) make such other orders as it thinks fit in the circumstances of the case.

**20. Sub-tenant to become tenant on determination of tenancy.**—Where the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the whole or any part of such premises has been lawfully sub-let whether before or after the commencement of this Act shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions on which he would have held from the tenant if the tenancy had continued.

**21. Vacant possession to the landlord.**—Notwithstanding anything contained in any other law, where the interest of a tenant in any premises is determined for any reason whatsoever and any decree or order is passed by a court under this Act for the recovery of possession of such premises, the decree or order shall, subject to the provisions of section 20, be binding on all persons who may be in occupation of the premises and vacant possession thereof shall be given to the landlord by evicting all such persons therefrom:

Provided that nothing in this section shall apply to any person who has an independent title to such premises.

## CHAPTER IV

### HOTELS AND LODGING HOUSES

**22. Application of this Chapter.**—The provisions of this Chapter shall apply to all hotels and lodging houses within the Municipalities of New Delhi and Delhi and the Notified Area of the Civil Station, Delhi and may be applied by the Central Government, by notification in the Official Gazette, to such other areas in the State of Delhi or Ajmer as may be specified in the notification.



**23. Appointment of Controller.**—The Central Government may, by notification in the Official Gazette, appoint any person to be a Controller for the purpose of performing the functions assigned to him by this Chapter.

**24. Fixing of fair rate.**—(1) Where the Controller, on a written complaint or otherwise, has reason to believe that the charges made for board or lodging or any other service provided in any hotel or lodging house are excessive, he may fix a fair rate to be charged for board, lodging or other services provided in the hotel or lodging house and in fixing such fair rate, specify separately the rate for lodging, board or other services.

(2) In determining the fair rate under sub-section (1), the Controller shall have regard to the circumstances of the case and to the prevailing rate of charges for the same or similar accommodation, board and service, during the twelve months immediately preceding the 1st day of September, 1939 and to any general increase in the cost of living after that date.

**25. Revision of fair rate.**—On a written application from the manager of a hotel or the owner of a lodging house or otherwise, the Controller may, from time to time, revise the fair rate to be charged for board, lodging or other service, and fix such rate as he may deem fit having regard to any general rise or fall in the cost of living which may have occurred after the fixing of fair rate.

**26. Charges in excess of fair rate not recoverable.**—When the Controller has determined the fair rate of charges—

(a) the manager of the hotel or the owner of the lodging house, as the case may be, shall not charge any amount in excess of the fair rate and shall not, except with the previous written consent of the Controller, withdraw from the lodgers any concession or service allowed at the time when the Controller determined the fair rate;

(b) any agreement for the payment of any charges in excess of such fair rate shall be void in respect of such excess and shall be construed as if it were an agreement for payment of the said fair rate;

(c) any sum paid by a lodger in excess of the fair rate shall be recoverable by him at any time within a period of six months from the date of the payment from the manager of the hotel or the owner of the lodging house or his legal representatives and may, without prejudice to any other mode of recovery, be deducted by such lodger from any amount payable by him to such manager or owner.

**27. Provisions relating to inquiries by Controller.**—(1) No fair rate under this Chapter shall be fixed by the Controller except after holding an inquiry

(2) Every such inquiry shall be made summarily in the prescribed manner.

(3) For the purposes of holding any inquiry under sub-section (1), the Controller may require the manager of a hotel or the owner of a lodging house to produce before him any books of account, documents or other information relating to the hotel or lodging house concerned which he may consider necessary and may himself enter, or authorise any person subordinate to him to enter, upon any premises to which the inquiry relates.

**28. Appeals.**—(1) Any person aggrieved by the order of the Controller under this Chapter may, within fifteen days on which the order is communicated to him, prefer an appeal in writing to the Chief Commissioner.

(2) The Chief Commissioner shall call for the record of the Controller and after examining the record and after making such further inquiry as he thinks fit either personally or through the Controller, shall decide the appeal.

(3) The decision of the Chief Commissioner and subject only to such decision, the order of the Controller shall, for the purposes of this Chapter, be final.

**29. Penalty.**—Any manager of a hotel or owner of a lodging house who—

(i) fails or refuses to produce before the Controller any books of account or document or other information which the Controller may require him to produce under sub-section (3) of section 27, or refuses to allow the Controller or any person authorised by him under the said sub-section access to the premises to which the inquiry relates; or

(ii) charges any amount in excess of the fair rate in contravention of section 26,

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

**30. Controller to be deemed to be public servant.**—A Controller appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Act XLV of 1860).

**31. Protection of action taken under this Chapter.**—No suit, prosecution or other legal proceeding shall lie against a Controller in respect of anything which is in good faith done or intended to be done under this Chapter.

## CHAPTER V

### JURISDICTION OF COURTS, APPEALS, REVIEW AND REVISION

**32. Jurisdiction of courts.**—(1) Any civil court in the State of Delhi or Ajmer which has jurisdiction to hear and decide a suit for recovery of possession of any premises shall have jurisdiction to hear and decide any case under this Act relating to such premises if it has pecuniary jurisdiction and is otherwise competent to hear and decide such a case under any law for the time being in force.

(2) The value of any case under this Act, for the purposes of the pecuniary jurisdiction of the court, shall be determined by the amount of rent which is or would be payable for a period of twelve months, calculated according to the highest amount claimed in the case.

(3) If any question arises whether any suit, application or other proceeding is a case under this Act, the question shall be determined by the court.

(4) For the purposes of this Chapter, a case under the Act, includes any suit, application or other proceeding under this Act and also includes any claim or question arising out of this Act or any of its provisions.

**33. Appeals.**—(1) Any person aggrieved by any decree or order of a court passed under this Act may, in such manner as may be prescribed, prefer an appeal—

(a) to the court of the senior subordinate judge, if any, where the value of the case does not exceed two thousand rupees:

Provided that where there is no senior subordinate judge, the appeal shall lie to the district judge;

(b) to the court of the district judge, where the value of the case exceeds two thousand rupees but does not exceed ten thousand rupees; and

(c) to the High Court, where the value of the case exceeds ten thousand rupees.

(2) No second appeal shall lie from any decree or order passed in any case under this Act.

**34. Revision and review.**—(1) The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit.

(2) Any court may, after giving notice to the parties, review its own order.

**35. Limitation.**—Subject to the provisions of Part II and Part III of the Indian Limitation Act, 1908 (IX of 1908), any person aggrieved by a decree or an order passed in any case under this Act may prefer an appeal—

(a) where it lies to any court other than the High Court, within thirty days from the date of such decree or order; and

(b) where it lies to the High Court, within sixty days from the date of such decree or order.

**36. Procedure before courts.**—(1) The court shall follow such procedure as may be prescribed in hearing any case under this Act and in executing any orders made by it.

(2) Subject to any rules that may be made under this Act, the court may hold a summary inquiry into any application or other proceeding under this Act (other than a suit for eviction under section 13) and the practice and the procedure of a court of small causes shall, as far as may be, apply to such application or other proceedings as if they were suits and proceedings cognizable by a court of small causes.

**37. Act to over-ride other laws.**—The provisions of this Act and of the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

## CHAPTER VI

### MISCELLANEOUS

**38. Power to exempt.**—The Central Government may, by notification in the Official Gazette, exempt from the operation of all or any of the provisions of this Act for such period as may be specified in the notification—

(a) all the premises the construction of which has not been completed before the commencement of this Act or any class of them; or

(b) all the premises which have been, or are, let for use as a cinema house or a place for dramatic or other forms of public entertainment or any class of them.

**39. Landlord's duty to keep the premises in good repair.**—(1) Notwithstanding anything contained in any law for the time being in force, and in the absence of agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.

(2) If the landlord neglects or fails to make within a reasonable time, after notice, any repairs which he is bound to make under sub-section (1), the tenant may make the same himself and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

(3) Where any repairs without which the premises are not habitable or useable except with undue inconvenience are to be made and the landlord neglects or fails to make them after notice served under sub-section (1), the tenant may apply to the court for permission to make such repairs himself and, where such repairs are made with the permission of the court, the limitation as to the amount deductible or recoverable as provided in sub-section (2) shall not apply.

**40. Landlord's duty to give notice of new constructions to Government.**—Whenever, after the commencement of this Act, any premises are constructed, the landlord shall, within fifteen days of the completion of such construction, give intimation thereof in writing to the Estate Officer to the Government of India or to such other officer as may be specified in this behalf by the Government.

**41. Leases of vacant premises to Government.**—(1) The provisions of this section shall apply only in relation to premises within the Municipality of New Delhi which are, or are intended to be, let for use as a residence.

(2) Whenever any premises the standard rent of which is not less than two thousand and four hundred rupees per year becomes vacant, either by the landlord ceasing to occupy the premises or by the termination of a tenancy or by the eviction of a tenant or by the release of the premises from requisition or otherwise,—

(a) the landlord shall, within seven days of the premises becoming vacant, give intimation thereof in writing to the Estate Officer to the Government of India;

(b) whether or not such intimation is given, the Estate Officer may serve on the landlord by post or otherwise a notice—

(i) informing him that the premises are required by the Government for such period as may be specified in the notice, and

(ii) requiring him, and every person claiming under him, to deliver possession of the premises forthwith to such officer or person as may be specified in the notice:

Provided that where the landlord has given the intimation required by clause (a) no notice shall be issued by the Estate Officer under clause (b) more than seven days after the delivery to him of the intimation:

Provided further that nothing in this sub-section shall apply in respect of any premises the possession of which obtained by the landlord on the basis of any decree or order made on the grounds set forth in clause (e) of the proviso to sub-section (1) of section 18 or in respect of any premises which have been released from requisition for the use and occupation of the landlord himself.

(3) Upon the service of a notice under clause (b) of sub-section (2), the premises shall be deemed to have been leased to the Government for the period specified in the notice, as from the date of the delivery of the intimation under clause (a) of sub-section (2) or in a case where no such intimation has been given, as from the date on which possession of the premises is delivered in pursuance of the notice, and the other terms of the lease shall be such as may be agreed upon between the Government and the landlord or in default of agreement, as may be determined by the court, in accordance with the provisions of this Act.

(4) In every case where the landlord has in accordance with the provisions of sub-section (2) given intimation of any premises becoming vacant and the premises are not taken on lease by the Government under this section, the Government shall pay to the landlord a sum equal to one-fifty-second of the standard rent per year of the premises.

(5) Any premises taken on lease by the Government under this section may be put to any such use as the Government thinks fit, and in particular the Government may permit the use of the premises for the purposes of any public institution or any foreign embassy, legation or consulate or any High Commissioner or Trade Commissioner, or as a residence by any officer in the service of the Government or of a foreign embassy, legation or consulate or of a High Commissioner or Trade Commissioner.

**42. Penalties.**—(1) If any person receives any payment in contravention of the provisions of section 5, he shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to an amount exceeding one thousand rupees by the amount or value of payment so received by him, or with both.

(2) If any tenant fails to comply with the provisions of clause (c) of sub-section (3) of section 6, or supplies under that clause, a statement which is false in any material particular, he shall be punishable with fine which may extend to one thousand rupees.

(3) If any tenant sub-lets the whole of any premises in contravention of the provisions of clause (b) of the proviso to sub-section (1) of section 13, he shall be punishable with fine which may extend to one thousand rupees.

(4) If any landlord fails to comply with the provisions of section 40, he shall be punishable with fine which may extend to one thousand rupees.

(5) If any person contravenes the provisions of clause (a) of sub-section (2) of section 41, or fails to comply with a requirement under clause (b) thereof, he shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(6) No court shall take cognizance of an offence punishable under sub-section (1) unless the complaint in respect of the offence has been made within three months from the date of the commission of the offence.

(7) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any magistrate of the first class may pass a sentence of fine exceeding one thousand rupees on a person convicted of an offence punishable under sub-section (1).

**43. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of service of notice under this Act;

(b) the procedure to be followed by courts for hearing suits, applications or other legal proceedings and in executing decrees or orders passed by such courts;

(c) the manner in which courts may hold summary inquiry under this Act;

(d) levy of court-fees and other fees for suits, applications and other proceedings under this Act;

(e) the manner in which a Controller may hold inquiry under Chapter IV;

(f) any other matter which has to be, or may be, prescribed.

**44. Repeals and savings.**—(1) The Delhi and Ajmer-Merwara Rent Control Act, 1947 (XIX of 1947) is hereby repealed:

Provided that notwithstanding such repeal, the Rent Controller appointed under the Fourth Schedule to the said Act shall, in respect of cases pending before him at the commencement of this Act, fix the standard rent in accordance with the provisions of the said Schedule as if this Act had not been passed.

(2) Part IV of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 (Bombay Act VII of 1944) as extended to the Municipality of New Delhi, the Notified Area of the Civil Station, Delhi and the Municipality of Delhi by a notification of the Government of India in the late Department of Works, Mines and Power No. 1884-W. II/47, dated the 18th March, 1947 shall cease to have effect in the said areas; and for the removal of doubts, it is hereby declared that section 6 of the General Clauses Act, 1897 (X of 1897) shall apply in relation to such ceasing as it applies in relation to the repeal of an enactment by a Central Act.

## THE FIRST SCHEDULE

[See section 1 (2)]

### AREAS TO WHICH THE ACT EXTENDS

#### *The State of Delhi—*

1. The Municipality of Delhi;
2. The Municipality of New Delhi;
3. The Cantonment of Delhi;

4. The Notified Area of the Civil Station, Delhi;
5. The Municipality of Shahdara.
6. The Notified Area, Red Fort.
7. The West Notified Area, Delhi.

**B. The State of Ajmer—**

1. The Municipality of Ajmer and all land within one mile of the limits of that Municipality;
2. The Municipality of Beawar and all land within one mile of the limits of that Municipality;
8. The Cantonment of Nasirabad and all land within one mile of the limits of that Cantonment.

THE SECOND SCHEDULE

[See section 2 (i)]

PART A

PROVISIONS FOR DETERMINING THE STANDARD RENT OF PREMISES  
IN THE STATE OF DELHI

1. In this Part of this Schedule, "basic rent" in relation to any premises means—

(a) where the fair rent of the premises has been determined or redetermined under the provisions of the New Delhi House Rent Control Order, 1939, the rent as so determined, or, as the case may be, redetermined;

(b) where the standard rent of the premises has been fixed by the court under section 7 of the Delhi Rent Control Ordinance, 1944 (XXV of 1944), the rent as so fixed;

(c) in any other case,—

(i) the rent at which the premises were let on the 1st day of November, 1939, or

(ii) if the premises were not let on that date, the rent at which they were first let at any time after that date but before the 2nd day of June, 1944.

2. Where the premises in respect of which rent is payable were let, for whatever purpose, on or after the 2nd day of June, 1944, the standard rent of the premises shall be—

(a) where the standard rent of the premises has been fixed by the Rent Controller under the provisions of the Fourth Schedule to the Delhi and Ajmer-Merwara Rent Control Act, 1947 (XIX of 1947), such standard rent; or

(b) where the standard rent has been fixed by the court under clause (b) of sub-section (I) of section 8, such standard rent; or

(c) in any other case, so long as the standard rent is not fixed by the court, the rent at which the premises were first let.

3. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are let for the purpose of being used as a residence or for any of the purposes of a public hospital, an educational institution, a public library or reading-room or an orphanage, the standard rent of the premises shall be the basic rent increased by—

(a) 12½ per cent. thereof, if the basic rent per annum is not more than Rs. 300; .

(b) 15½ per cent. thereof, if the basic rent per annum is more than Rs. 300 but not more than Rs. 600;

(c) 18½ per cent. thereof, if the basic rent per annum is more than Rs. 600, but not more than Rs. 1,200; or

(d) 25 per cent. thereof, if the basic rent per annum is more than Rs. 1,200.

4. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are let for any purpose other than those mentioned in paragraph 3, the standard rent of the premises shall be the basic rent increased by twice the amount by which it would be increased under paragraph 3 if the premises were let for a purpose mentioned in that paragraph.

5. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are used mainly as a residence and incidentally for business or profession, the standard rent of the premises shall be the mean of the rent as calculated under paragraphs 3 and 4.

## PART B

### PROVISIONS FOR DETERMINING THE STANDARD RENT OF PREMISES IN THE STATE OF AJMER.

1. In this Part of this Schedule, "basic rent" in relation to any premises means—

(a) where the fair rent of the premises has been determined or redetermined under the provisions of the Ajmer House Rent Control Order, 1943, the rent as so determined or, as the case may be, re-determined;

(b) in any other case,—

(i) the rent at which the premises were let on the 1st day of September, 1939; or

(ii) if the premises were not let on that date, the rent at which they were first let at any time after that date but before the 2nd day of June, 1944.

2. Where the premises in respect of which rent is payable were let, for whatever purpose on or after the 2nd day of June, 1944, the standard rent of the premises shall be—

(a) where the standard rent has been fixed by the court under clause (b) of sub-section (I) of section 8, such standard rent; or

(b) in any other case, so long as the standard rent is not fixed by the court, the rent at which the premises were first let.



8. Where the premises in respect of which rent is payable are let for use as a residence not being premises to which paragraph 2 applies, the standard rent of the premises shall be the basic rent increased by—

(a)  $8\frac{1}{2}$  per cent. thereof, if the basic rent per annum is not more than Rs. 800;

(b)  $12\frac{1}{2}$  per cent. thereof, if the basic rent per annum is more than Rs. 800 but not more than Rs. 600;

(c)  $18\frac{1}{2}$  per cent. thereof, if the basic rent per annum is more than Rs. 600, but not more than Rs. 1,200; or

(d) 25 per cent. thereof, if the basic rent per annum is more than Rs. 1,200.

4. Where the premises in respect of which rent is payable are let for any purpose other than use as a residence, not being premises to which paragraph 2 applies, the standard rent of the premises shall be the basic rent increased by—

(a) 25 per cent. thereof, if the basic rent per annum is not more than Rs. 600;

(b)  $37\frac{1}{2}$  per cent. thereof, if the basic rent per annum is more than Rs. 600, but not more than Rs. 1,200; or

(c) 50 per cent. thereof, if the basic rent per annum is more than Rs. 1,200.

5. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are used mainly as a residence and incidentally for business or profession, the standard rent of the premises shall be the mean of the rent as calculated under paragraphs 3 and 4.

#### STATEMENT OF OBJECTS AND REASONS

The life of the Delhi and Ajmer-Merwara Rent Control Act, 1947 (XIX of 1947) which was to have expired on the 24th March, 1951 was extended for a further period of two years by the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1951 as the prevailing circumstances necessitated the continuance of the Act.

2. Various suggestions have, from time to time, been received from Members of Parliament, landlords, tenants and others to amend this Act in the light of the present-day circumstances. These suggestions include *inter alia* exemption of new constructions from the operation of rent control with a view to encouraging building activities, the introduction of a summary procedure for the more expeditious disposal of rent fixation and eviction cases, provision of a higher return of the capital invested by the landlord etc. In the working of this Act also for the last four years, certain defects and lacunae have been noticed. Judicial decisions in various High Courts have also brought to light certain defects. Besides, there are several healthy provisions in the Rent Control Acts in other States which could usefully be incorporated in the Act applicable to Delhi and Ajmer. It is therefore considered desirable to amend and consolidate the law on the subject by incorporating the necessary amendments and also by removing the defects and lacunae in the existing Act. The present Bill seeks to achieve these objects.

N. V. GADGIL.

NEW DELHI,  
The 31st May, 1951.

The following Bills were introduced in Parliament on the 7th June, 1951:—

**BILL No. 58 OF 1951**

*A Bill to declare, in pursuance of clause (3) of article 286 of the Constitution, certain goods to be essential for the life of the community.*

BE it enacted by Parliament as follows:—

**1. Short title.**—This Act may be called the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1951.

**2. Declaration of certain goods to be essential for the life of the community.**—The goods specified in the Schedule are hereby declared to be essential for the life of the community.

**3. Regulation of tax on sale or purchase of essential goods.**—No law made after the commencement of this Act by the legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

**THE SCHEDULE**

(See section 2)

*Goods declared essential for the life of the community*

1. Cereals and pulses in all forms, including bread and flour, including ~~atta~~, maida, suji and bran (except when any such article is sold in sealed containers).

2. Green or dried vegetables and flower seeds, bulbs and plants and fresh and dried fruits, other than medical preparations (except when any such article is sold in sealed containers).

3. Fresh milk, whole or separate, and milk products.

4. Salt.

5. Coarse and medium handloom and mill-made cotton cloth and handloom woollen cloth.

6. Fertilizers and agricultural machinery and implements.

7. Raw cotton, including ginned and un-ginned cotton or kapas or cotton thread, cotton seed, raw jute and sugar-cane.

8. Coal, including coke and other derivatives, petroleum and petroleum products, including motor spirit and electrical energy, except energy intended for domestic use.

9. Iron and steel.

**STATEMENT OF OBJECTS AND REASONS**

Article 286(3) of the Constitution provides that—

“No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential

for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

A list of goods essential for the life of the community for the purpose of the above mentioned provisions has accordingly been drawn up and the Bill provides that the imposition, after the enactment of the Bill, of a sales or purchase tax on these goods should be reserved for the consideration of the President. The Bill, if enacted, may help to achieve a certain measure of uniformity in the taxes, and also prevent essential goods being unduly taxed.

C. D. DESHMUKH.

NEW DELHI:

The 2nd June, 1951.

#### BILL \*No. 59 OF 1951

*A Bill to provide for the welfare of labour, and to regulate the conditions of work, in plantations.*

BE it enacted by Parliament as follows:—

#### CHAPTER I

#### PRELIMINARY

1. **Short title, extent, commencement and application.**—(1) This Act may be called the Plantations Labour Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It applies in the first instance to all tea, coffee, rubber and cinchona plantations, but any State Government may, subject to the previous approval of the Central Government, by notification in the Official Gazette, apply it to any other class of plantations within that State.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) "adolescent" means a person who has completed his fifteenth year but has not completed his eighteenth year;

(b) "adult" means a person who has completed his eighteenth year;

(c) "child" means a person who has not completed his fifteenth year;

(d) "day" means a period of twenty-four hours beginning at midnight;

(e) "employer", when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation,

\*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Parliament the introduction of the Bill.

and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person, shall be deemed to be the employer in relation to that plantation;

(f) "plantation" means any land used or intended to be used for growing tea, coffee, rubber, or cinchona which admeasures ten acres or more or whereon twenty or more persons are employed, or were employed on any day of the preceding twelve months, and in any State where the provisions of this Act have been applied by notification under sub-section (4) of section 1 to any other class of plantations, means also any land used or intended to be used for growing the plant mentioned in such notification and whereon twenty or more persons are employed, or were employed on any day of the preceding twelve months,

(g) "prescribed" means prescribed by rules made under this Act;

(h) "qualified medical practitioner" means a person having a certificate granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916) or in the Schedules to the Indian Medical Council Act, 1933 (XXVII of 1933);

(i) "wages" has the meaning assigned to it in clause (h) of section 2 of the Minimum Wages Act, 1948 (XI of 1948);

(j) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be fixed by the State Government in relation to plantations in any area after such consultation as may be prescribed with reference to the plantations concerned in that area;

(k) "worker" means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, but does not include—

(a) a medical attendant at the plantation;

(b) any person whose monthly wages exceed two hundred rupees; or

(c) a person employed in a plantation primarily in a managerial or other supervisory capacity notwithstanding that his monthly wages do not exceed rupees two hundred;

(l) "young person" means a person who is either a child or an adolescent.

**3. Reference to time of day.**—In this Act, references to time of day are references to Indian Standard time being five and a half hours ahead of Greenwich Mean time:

Provided that for any area in which the Indian Standard time is not ordinarily observed, the State Government may make rules—

(a) specifying the area;

(b) defining the local mean time ordinarily observed therein; and

(c) permitting such time to be observed in all or any of the plantations situated in that area.

## CHAPTER II

## INSPECTING STAFF

**4. Chief Inspector and Inspectors.**—(1) The State Government may, by notification in the Official Gazette, appoint for the State a duly qualified person to be the chief inspector of plantations and so many duly qualified persons to be inspectors of plantations subordinate to the chief inspector as it thinks fit.

(2) Subject to such rules as may be made in this behalf by the State Government, the chief inspector may declare the local area or areas within which, or the plantations with respect to which, inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the State Government.

(3) The chief inspector and all inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code (Act XLV of 1860).

**5. Powers and functions of inspectors.**—Subject to any rules made by the State Government in this behalf, an inspector may within the local limits for which he is appointed—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the rules made thereunder are being observed in the case of any plantation;

(b) with such assistants, if any, as he thinks fit, enter, inspect and examine any plantation or part thereof at any reasonable time for the purpose of carrying out the objects of this Act;

(c) examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) exercise such other powers as may be prescribed;

Provided that no person shall be compelled under this section to answer any question or make any statement tending to incriminate himself.

**6. Facilities to be afforded to inspectors.**—Every employer shall afford the inspector all reasonable facilities for making any entry, inspection, examination or inquiry under this Act.

**7. Certifying surgeons.**—(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such plantation or class of plantations as it may assign to them respectively.

(2) The certifying surgeon shall carry out such duties as may be prescribed in connection with—

(a) the examination and certification of workers;

(b) the exercise of such medical supervision as may be prescribed where adolescents and children are, or are to be, employed in any work in any plantation which is likely to cause injury to their health.

## CHAPTER III

## PROVISIONS AS TO HEALTH

**8. Drinking water.**—In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers.

**9. Conservancy.**—(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.

**10. Medical facilities.**—(1) In every plantation there shall be provided and maintained so as to be readily available during all working hours such medical facilities for the workers as may be prescribed by the State Government.

(2) If in any plantation medical facilities are not provided and maintained as required by sub-section (1) the chief inspector may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer.

(3) For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land-revenue.

## CHAPTER IV

## WELFARE

**11. Canteens.**—(1) The State Government may make rules requiring that in every plantation wherein two hundred and fifty workers are ordinarily employed, one or more canteens shall be provided and maintained by the employer for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the date by which the canteen shall be provided;

(b) the number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteens;

(c) the food-stuffs which may be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and the representation of the workers in the management of the canteen;

(e) the delegation to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

**12. Creches.**—(1, In every plantation wherein more than one hundred women workers are employed or were employed on any day of the

preceding twelve months, there shall be provided and maintained by the employer suitable rooms for the use of children of such women who are below the age of six years.

(2) Such rooms shall—

- (a) Provide adequate accommodation;
- (b) be adequately lighted and ventilated;
- (c) be maintained in a clean and sanitary condition; and
- (d) be under the charge of a woman trained in the care of children and infants.

(3) The State Government may make rules prescribing the location and the standards of such rooms in respect of their construction and accommodation and the equipment to be provided therein.

**13. Recreational facilities.**—The State Government may make rules requiring every employer to make provision in his plantation for such recreational facilities for the workers and children employed therein as may be prescribed.

**14. Educational facilities.**—Where the children between the ages of six and twelve of workers employed in any plantation exceed fifty in number, the State Government may make rules requiring every employer to provide educational facilities for the children in such manner and of such standard as may be prescribed.

**15. Housing facilities.**—It shall be the duty of every employer to provide and maintain for every worker and his family residing in the plantation necessary housing accommodation.

*Explanation.*—For the purpose of this Chapter ‘family’ means the worker’s wife, children, aged parents, and minor sisters and brothers residing with and wholly dependent upon the worker.

**16. Power to make rules relating to housing.**—The State Government may make rules for the purpose of giving effect to the provisions of section 15 and, in particular providing for—

- (a) the standard and specification of the accommodation to be provided;
- (b) the selection and preparation of sites for the construction of houses and the size of such plot;
- (c) the constitution of advisory boards consisting of representatives of the State Government, the employer and the workers for consultation in regard to matters connected with housing and the exercise by them of such powers, functions and duties in relation thereto as may be specified;
- (d) the fixing of rent for the housing accommodation provided for workers;
- (e) the allotment to workers of housing accommodation and the eviction of workers therefrom;
- (f) access to the public to those parts of the plantation wherein the workers are housed.

## CHAPTER V

## HOURS AND LIMITATION OF EMPLOYMENT

**17. Weekly hours.**—Save as otherwise expressly provided in this Act, no adult worker shall be required or allowed to work on any plantation in excess of fifty-four hours a week and no adolescent or child for more than forty hours a week.

**18. Weekly holidays.**—(1) The State Government may by rules made in this behalf—

(a) provide for a day of rest in every period of seven days which shall be allowed to all workers ;

(b) provide for payment for work done on a day of rest at a rate not less than the overtime rate prevailing in the area, and where there is no such rate at such rate as may be fixed by the State Government in this behalf.

(2) Notwithstanding anything contained in clause (a) of sub-section (1) where a worker is willing to work on any day of rest which is not a closed holiday in the plantation, nothing contained in this section shall prevent him from doing so:

Provided that in so doing a worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

*Explanation 1.*—Where on any day a worker has been prevented from working in any plantation by reason of tempest, fire, rain or other natural causes, that day, may, if he so desires, be treated as his day of rest for the relevant period of seven days within the meaning of sub-section (1).

*Explanation 2.*—Nothing contained in this section shall apply to any worker whose total period of employment including any day spent on leave is less than six days.

**19. Daily intervals for rest.**—The period of work on each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest for at least half an hour.

**20. Spread-over.**—The period of work of an adult worker in a plantation shall be so arranged that inclusive of his interval for rest under section 19 it shall not spread over more than twelve hours including the time spent in waiting for work on any day.

**21. Notice of period of work.**—(1) There shall be displayed and correctly maintained in every plantation a notice of periods of work in such form and manner as may be prescribed showing clearly for every day the periods during which the workers may be required to work.

(2) Subject to the other provisions contained in this Act, no worker shall be required or allowed to work in any plantation otherwise than in accordance with the notice of periods of work displayed in the plantation.

(3) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the day's work.



**22. Prohibition of employment of young children.**—No child who has not completed his twelfth year shall be required or allowed to work in any plantation.

**23. Night work for women and children.**—Except with the permission of the State Government, no woman or child worker shall be employed in any plantation otherwise than between the hours of 6 A.M. and 7 P.M. :

Provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.

**24. Non-adult workers to carry tokens.**—No child who has completed his twelfth year and no adolescent shall be required or allowed to work in any plantation unless—

(a) a certificate of fitness granted with reference to him under section 25 is in the custody of the employer; and

(b) such child or adolescent carries with him while he is at work a token giving a reference to such certificate.

**25. Certificate of fitness.**—(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed in the plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference to any young person intending to work, examine such person and ascertain his fitness for work either as a child or as an adolescent.

(2) A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.

**26. Power to require medical examination.**—An inspector may, if he thinks necessary so to do, cause any young person employed in a plantation to be examined by a certifying surgeon.

## CHAPTER VI

### LEAVE WITH WAGES

**27. Annual leave with wages.**—(1) Every worker shall be allowed leave with wages for a number of days calculated at the rate of—

(a) if an adult or adolescent, at the rate of one day for every thirty days of work performed by him, and

(b) if a child, one day for every twenty days of work performed by him:

Provided that a period of leave shall be inclusive of any holiday which may occur during such periods.

(2) If a worker does not in any one period of twelve months take the whole of the leave allowed to him under sub-section (1), any leave not taken by him shall be added to the leave to be allowed to him under that sub-section in the succeeding period of twelve months.

(3) A worker shall cease to earn any leave under this section when the earned leave due to him amounts to thirty days.

**28. Wages during leave period.**—(1) For the leave allowed to a worker under section 27, he shall be paid at the rate equal to the daily average of his total full-time wages, exclusive of any overtime earnings and bonus, 100 G. of I.

if any, but inclusive of dearness allowance and the cash equivalent of any advantage accruing by the concessional supply by the employer of food-grains for the day on which he worked.

(2) A worker who has been allowed leave for any period less than four days in the case of an adult and five days in the case of a child under section 27 shall, before his leave begins be paid, his wages for the period of the leave allowed.

**29. Sickness and maternity benefits.**—(1) Subject to any rules that may be made in this behalf, every worker shall be entitled to obtain from his employer—

(a) in the case of sickness certified by a qualified medical practitioner, sickness allowance, and

(b) if a woman, in the case of confinement or expected confinement, maternity allowance,

at such rate, for such period and at such intervals as may be prescribed.

(2) The State Government may make rules regulating the payment of sickness or maternity allowance and any such rules may specify the circumstances in which such allowance shall not be payable or shall cease to be payable, and in framing any rules under this section the State Government shall have due regard to the medical facilities that may be provided by the employer in any plantation.

## CHAPTER VII

### PENALTIES AND PROCEDURE

**30. Obstruction.**—(1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination or inquiry authorised by or under this Act in relation to any plantation, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**31. Use of false certificate of fitness.**—Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 25 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

**32. Contravention of provisions regarding employment of labour.**—Whoever, except as otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made thereunder, prohibiting, restricting or regulating the employment of persons in a plantation, shall be

punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**33. Other offences.**—Whoever contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**34. Enhanced penalty after previous conviction.**—If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

**35. Exemption of employer from liability in certain cases.**—Where an employer charged with an offence under this Act, alleges that another person is the actual offender, he shall be entitled upon complaint made by him in this behalf to have on giving to the prosecutor in this behalf three clear days' notice in writing of his intention so to do, that other person brought before the court on the day appointed for the hearing of the case, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that—

(a) he has used due diligence to enforce the execution of the relevant provisions of this Act; and

(b) that the other person committed the offence in question without his knowledge, consent or connivance the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be acquitted:

Provided that—

(a) the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges to be the actual offender and by the prosecutor, and

(b) if, in spite of due diligence, the person alleged as the actual offender cannot be brought before the court on the day appointed for the hearing of the case, the court shall adjourn the hearing thereof from time to time so, however, that the total period of such adjournment does not exceed three months, and if, by the end of the said period, the person alleged as the actual offender cannot still be brought before the court, the court shall proceed to hear the case against the employer.

**36. Cognizance of offences.**—No court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of, the chief inspector and no court inferior to that of a presidency magistrate or a magistrate of the second class shall try any offence punishable under this Act,

**37. Limitation of prosecutions.**—No court shall take cognizance of an offence punishable under this Act unless the complaint thereof has been made or is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

## CHAPTER VIII

### MISCELLANEOUS

**38. Power to give directions.**—The Central Government may give directions to the Government of any Part A State or Part B State as to the carrying into execution in the State of the provisions contained in this Act.

**39. Power to exempt.**—The State Government may, by order in writing, exempt, subject to such conditions and restrictions as it may think fit to impose, any employer or class of employers from all or any of the provisions of this Act:

Provided that in the case of a State Government, other than the Central Government, no such exemption shall be granted except with the previous approval of the Central Government.

**40. General power to make rules.**—(1) The State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act:

Provided that the date to be specified under clause (3) of section 29 of the General Clauses Act, 1897 (X of 1897) shall not be less than six weeks from the date on which the draft of the proposed rules was published.

(2) In particular, and without prejudice to the generality of the foregoing power, any such rules may provide for—

(a) the qualifications required in respect of the chief inspector and inspector;

(b) the powers which may be exercised by inspectors and the areas in which and the manner in which such powers may be exercised;

(c) the medical supervision which may be exercised by certifying surgeons;

(d) the examination by inspectors or other persons of the supply and distribution of drinking water in plantations;

(e) appeals from any order of the chief inspector or inspector and the form in which, the time within which and the authorities to which such appeals may be preferred;

(f) the time within which housing, recreational, educational or other facilities required by this Act to be provided and maintained may be so provided;

(g) the types of latrines and urinals that should be maintained in plantations;

(h) the medical, recreational and educational facilities that should be provided in plantations;

(i) the form and manner in which notices of periods of work shall be displayed and maintained; and

(j) the registers which should be maintained by employers and the returns whether occasional or periodical, as in the opinion of the State Government may be required for the purposes of this Act.

(3) All rules made under this Act shall, if made by any Government, other than the Central Government, be subject to the previous approval of the Central Government.

### STATEMENT OF OBJECTS AND REASONS

In spite of the fact that the plantation industry provides employment for more than a million workers, there is at present no comprehensive legislation regulating the conditions of labour in the industry. The Tea Districts Emigrant Labour Act, 1932, which applies only to Assam, regulates merely the conditions of recruitment of labour for employment in the tea gardens of Assam. The Workmen's Compensation Act, 1923, which applies to estates growing cinchona, coffee, rubber or tea also does not confer any substantial benefit on plantation labour as accidents in plantations are few. The other Labour Acts, like the Payment of Wages Act, 1936, the Industrial Employment Standing Orders Act, 1946 and the Industrial Disputes Act, 1947 benefit plantation labour only to a very limited extent. In its report the Labour Investigation Committee observed "that as the conditions of life and employment on plantations were different from those in other industries, it would be very difficult to fit plantation labour in the general framework of the Industrial Labour Legislation without creating serious anomalies" and recommended a plantation Labour Code covering all plantation areas.

2. The present Bill, drafted as an All-India measure, seeks to regulate the conditions of plantation labour generally. It applies in the first instance to tea, coffee, rubber and cinchona plantations, but the State Government may apply it to any other plantation. Provision is made in the Bill for assuring to the worker reasonable amenities, as for example, the supply of wholesome drinking water or suitable medical and educational facilities or provision for canteens and creches in suitable cases, or provision for a sufficient number of latrines and urinals separately for males and females. Housing accommodation is also to be provided for every worker and standards and specifications of such housing accommodation will be prescribed after due consultation. The Bill also regulates the working hours of workers employed in the plantations.

3. Children under 12 are prohibited from employment in any plantation and State Governments are empowered to make rules regulating the payment of sickness or maternity benefits.

4. Necessary provision is made in the Bill for the appointment of a suitable inspecting, medical or other staff for the purpose of securing the implementation of the various provisions in the Bill.

JAGJIVAN RAM,

NEW DELHI;

The 5th June, 1951.

The following Bill was introduced in Parliament on the 9th June, 1951:—

BILL No. 60 OF 1951

*A Bill to make certain temporary provisions for the relief of displaced persons from indebtedness pending further legislation relating thereto.*

Enacted by Parliament as follows:—

**1. Short title, extent and duration.**—(1) This Act may be called the Displaced Persons (Temporary Relief from Indebtedness) Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall remain in force until the 31st day of March, 1952.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "debt" means any liability incurred before the 15th day of August, 1947, whether secured or unsecured or in cash or in kind, or payable presently or in future or under any decree or order of a civil or revenue court or otherwise, and includes any liability incurred after the said date, if the transaction out of which the subsequent liability is incurred is solely by way of renewal of any liability incurred before the said date, but does not include any liability the recovery of which is barred by limitation or which is otherwise irrecoverable under any law for the time being in force;

(b) "displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan, has, after the 1st day of March, 1947, left, or been displaced from, his place of residence in such area, and who has been subsequently residing in India, but does not include a banking company.

**3. Bar of fresh, and stay of pending, proceedings against displaced persons respecting debts.**—(1) Notwithstanding anything contained in any other law for the time being in force, no civil or revenue court shall, during the period this Act remains in force, entertain any suit or other proceeding including any proceeding in execution of any decree or order of a civil or revenue court for the recovery of any debt against a displaced person.

(2) Every such suit or other proceeding pending immediately before the commencement of this Act before any civil or revenue court shall be stayed during the period this Act remains in force, and every attachment, injunction, order appointing receiver or other process made or issued in any such suit or other proceeding and subsisting immediately before such commencement shall cease to have effect.

*Explanation.*—For the purposes of this section, "proceeding" does not include an appeal or a review or revision against any decree or order of a civil or revenue court.

**4. Stay of insolvency proceedings.**—Notwithstanding anything contained in any other law for the time being in force, every proceeding under any law for the time being in force relating to insolvency pending against a displaced person in any civil court immediately before the commencement of this Act, whether on the application of a creditor or of a displaced person, shall be stayed during the period this Act remains in force.

**5. Instalment decrees.**—Where a decree passed in relation to a debt against a displaced person is payable by instalments and an instalment payable thereunder falls due during the period this Act remains in force, then, notwithstanding anything contained in such decree or any order relating thereto, the failure to pay such instalment shall not be deemed to be a default and any such instalment shall, in the absence of anything to the contrary contained in any other law for the time being in force, become payable within one month of the expiration of this Act.

**6. Release of displaced persons under detention in civil prisons.**—Notwithstanding anything contained in any other law for the time being in force, all displaced persons under detention at the commencement of this Act in any civil prison in execution of any decree or order of a civil or revenue court for the recovery of a debt shall be released.

**7. Computation of period of limitation.**—(1) In computing the period of limitation prescribed by the Indian Limitation Act, 1908 (IX of 1908), or any other law for the time being in force for the institution of a suit or other proceeding for the recovery of any debt in a civil or revenue court against a displaced person, the period during which this Act remains in force shall be excluded.

(2) In computing the period of twelve years prescribed by section 48 of the Code of Civil Procedure, 1908 (Act V of 1908), for the execution of any decree for the recovery of any such debt as is referred to in sub-section (1), the period during which this Act remains in force shall be excluded.

**8. Voluntary settlements not barred.**—Nothing contained in this Act shall be deemed to preclude any creditor from accepting payment under, or any adjustment in respect of, any debt voluntarily made by the displaced person.

## STATEMENT OF OBJECTS AND REASONS

Pending the preparation of a comprehensive Bill on the subject of relief to displaced persons in the matter of their pre-partition debts, the present Bill seeks to give temporary relief to such persons by barring fresh legal proceedings against them and staying pending proceedings. The clauses of the Bill are self-explanatory. The Bill, of course, does not prevent voluntary settlements between displaced persons and their creditors.

2. It is expected that the comprehensive Bill will be ready for introduction in Parliament during its next session.

AJIT PRASAD JAIN.

NEW DELHI;  
The 7th June, 1951.

M. N. KAUL,  
Secretary.

